

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 586 of the Regular Session

As Engrossed: S2/28/07 S3/15/07

A Bill

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

SENATE BILL 369

5 By: Senator Madison
6 By: Representative Webb
7
8

For An Act To Be Entitled

9
10 AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND
11 FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO AMEND THE CHILD MALTREATMENT
15 ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 12-12-503(17), concerning child abuse and
21 neglect, is amended to read as follows:

22 (17) "Sexual abuse" means:

23 (A) By a person ten (10) years of age or older to a person
24 younger than eighteen (18) years of age:

25 (i) Sexual intercourse, deviate sexual activity, or
26 sexual contact by forcible compulsion;

27 (ii) Attempted sexual intercourse, deviate sexual
28 activity, or sexual contact by forcible compulsion;

29 (iii) Indecent exposure; or

30 (iv) Forcing the watching of pornography or live
31 sexual activity;

32 (B) By a person eighteen (18) years of age or older to a
33 person not his or her spouse who is younger than sixteen (16) years of age:

34 (i) Sexual intercourse, deviate sexual activity, or
35 sexual contact; or



1 (ii) Attempted sexual intercourse, deviate sexual
2 activity, or sexual contact;

3 (C) By a sibling or caretaker to a person younger than
4 eighteen (18) years of age:

5 (i) Sexual intercourse, deviate sexual activity, or
6 sexual contact; or

7 (ii) Attempted sexual intercourse, deviate sexual
8 activity, or sexual contact;

9 (D) By a caretaker to a person younger than eighteen (18)
10 years of age:

11 (i) Forcing or encouraging the watching of
12 pornography; ~~or~~

13 (ii) Forcing, permitting, or encouraging the
14 watching of live sexual activity; ~~or~~

15 (iii) Forcing listening to a phone sex line; or

16 (iv) An act of voyeurism as defined under § 5-16-

17 102; or

18 (E) By a person younger than ten (10) years of age to a
19 person younger than eighteen (18) years of age:

20 (i) Sexual intercourse, deviate sexual activity, or
21 sexual contact by forcible compulsion; or

22 (ii) Attempted sexual intercourse, deviate sexual
23 activity, or sexual contact by forcible compulsion;

24
25 SECTION 2. Arkansas Code § 12-12-504(a), concerning child abuse
26 penalties, is amended to read as follows:

27 12-12-504. Penalties.

28 (a)(1) Any person, or official, ~~or institution~~ negligently or
29 willfully failing to make notification when required by this subchapter shall
30 be guilty of a Class C misdemeanor.

31 (2) Any person, or official, ~~or institution~~ willfully making
32 false notification pursuant to this subchapter, knowing such allegations to
33 be false, shall be guilty of a Class A misdemeanor.

34 (3) Any person, or official, ~~or institution~~ willfully making
35 false notification pursuant to this subchapter, knowing such allegations to
36 be false, and who has been previously convicted of making willful false

1 allegations shall be guilty of a Class D felony.

2
3 SECTION 3. Arkansas Code § 12-12-506 is amended to read as follows:
4 12-12-506. Disclosure of central registry data.

5 (a)(1) A report made pursuant to this subchapter shall be confidential
6 and shall be used or disclosed only as provided in this section.

7 (2)(A) If the allegations are determined to be true in
8 accordance with § 12-12-512, disclosure including protected health
9 information is absolutely limited to:

10 (i) The administration of the adoption, foster care,
11 children's and adult protective services programs, or child care licensing
12 programs of any state;

13 (ii) A federal, state, or local government entity,
14 or any agent of the entity, having a need for the information in order to
15 carry out their responsibilities under law to protect children from abuse or
16 neglect;

17 (iii) Any person who is the subject of a true
18 report;

19 (iv) A civil or administrative proceeding connected
20 with the administration of the Arkansas Child Welfare State Plan when the
21 court or hearing officer determines that the information is necessary for the
22 determination of an issue before the court or agency;

23 (v) The administration of any federal or federally
24 assisted program that provides assistance, in cash or in kind, or services
25 directly to individuals on the basis of need;

26 (vi) An audit or similar activity conducted in
27 connection with the administration of such a plan or program by any
28 governmental agency that may by law conduct the audit or activity;

29 (vii) A person, agency, or organization engaged in a
30 bona fide research or evaluation project, but without information identifying
31 individuals named in a report or record, provided that:

32 (a) Having that information open for review is
33 essential to the research or evaluation;

34 (b) Prior written approval is granted by the
35 Director of the Department of Health and Human Services; and

36 (c) The child, through his or her parent,

1 guardian, or guardian ad litem, gives permission to release the information;
2 (viii) A properly constituted authority, including
3 multidisciplinary teams referenced in § 12-12-502(b), investigating a report
4 of known or suspected child abuse or neglect or providing services to a child
5 or family that is the subject of a report;

6 (ix)(a) The Division of Child Care and Early
7 Childhood Education of the Department of Health and Human Services and the
8 child care facility owner or operator who requested the registry information
9 through a signed notarized release from an individual who is a volunteer or
10 who has applied for employment or who is currently employed by a child care
11 facility or who is the owner or operator of a child care facility.

12 (b) This disclosure shall be for the limited
13 purpose of providing central registry background information and shall
14 indicate a true finding only;

15 (x) Child abuse citizen panels described in the
16 Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

17 (xi) Child fatality review panels as authorized by
18 the department;

19 (xii) The general public, the findings or
20 information about the case of child abuse or neglect that has resulted in a
21 child fatality or near fatality, but the central registry may redact any
22 information concerning siblings, attorney-client communications, and other
23 confidential communications;

24 (xiii) A grand jury or court, upon a finding that
25 information in the record is necessary for the determination of an issue
26 before the court or grand jury;

27 (xiv) The current foster parents of a child who is a
28 subject of a report;

29 (xv)(a) Individual federal and state senators and
30 representatives in their official capacity and their staff members who agree
31 not to allow any redisclosure of information.

32 (b) However, no disclosure shall be made to
33 any committee or legislative body of any information that identifies any
34 recipient of services by name or address;

35 (xvi) A court-appointed special advocate upon
36 presentation of an order of appointment for a child who is a subject of a

1 report;

2 (xvii) The attorney ad litem of a child who is the
3 subject of a report; ~~and~~

4 (xviii)(a) An Employer or volunteer agency for
5 purposes of screening an employee, applicant, or volunteer who is or will be
6 engaged in employment or activity with children, the elderly, the disabled,
7 or the mentally ill upon submission of a signed, notarized release from the
8 employee, applicant, or volunteer.

9 (b) The registry shall release only the
10 following information on founded reports to the employer or agency:

11 (1) That the employee, applicant, or
12 volunteer has a founded report;

13 (2) The date the investigation was
14 completed; and

15 (3) The type of founded report; and

16 (xix) The Division of Developmental Disabilities
17 Services and the Division of Adult and Aging Services as to participants of
18 the waiver program.

19 (B) A report of an investigative determination that is
20 true shall be disclosed to the division, by written report only, for purposes
21 of enforcement of licensing laws and regulations.

22 (b) Any licensing or registering authority in receipt of initial
23 notification of suspected child maltreatment may access the central registry
24 to the extent necessary to carry out its official responsibilities, but the
25 information must be maintained as confidential.

26 (c)(1) Any person or agency to whom disclosure is made shall not
27 disclose to any other person a report or other information obtained pursuant
28 to this section.

29 (2) However, a local educational agency or a school counselor
30 shall forward all true reports of child maltreatment received from the
31 department whenever a child transfers from one (1) local educational agency
32 to another and shall notify the department of the child's new school, and
33 address, if known.

34 (3) Any person disclosing information in violation of this
35 subsection shall be guilty of a Class C misdemeanor.

36 (d) A true report that has been administratively appealed pursuant to

1 this subchapter and that has been stayed because of criminal proceedings
2 *shall not be disclosed other than for administration of adoption, foster*
3 *care, or children's protective services programs.*

4 (e)(1) The department shall not release data that would identify the
5 person who made the report unless a court of competent jurisdiction orders
6 release of the information after the court has reviewed, in camera, the
7 record related to the report and has found it has reason to believe that the
8 reporter knowingly made a false report.

9 (2) However, the information shall be disclosed to the
10 prosecuting attorney or law enforcement officers on request.

11 (f) Within ten (10) days following an investigative determination, the
12 department shall provide ~~the person~~ a mandated reporter who made notification
13 with information ~~or agency making notification of suspected child~~
14 ~~maltreatment information~~ as to whether an investigation has been conducted
15 and whether services have been offered.

16 (g) The department may disclose the investigative determination of any
17 offender when the offender is engaged in child-related activities or
18 employment and the department has determined that children under the care of
19 the offender are at risk of maltreatment by the offender.

20 (h) Nothing in this subchapter shall be construed to prevent
21 subsequent disclosure by the subject of the report.

22 (i) Any record of a screened-out report of child maltreatment shall
23 not be disclosed except to the prosecuting attorney and an appropriate law
24 enforcement agency and may be used only within the department for purposes of
25 administration of the program.

26 (j)(1) Information on a pending investigation is confidential and may
27 be disclosed only as provided in this section.

28 (2) Information on a pending investigation shall be released
29 upon request to:

30 (A) The department;

31 (B) Law enforcement;

32 (C) The prosecuting attorney's office;

33 (D) A multidisciplinary team under § 12-12-502;

34 (E) Any licensing or registering authority, including a
35 school board, superintendent, or principal to the extent necessary to carry
36 out its official responsibilities, but the information shall be maintained as

1 confidential; and

2 (F)(i) Individual federal and state senators and
3 representatives and their staff members who agree not to allow any
4 redisclosure of information.

5 (ii) However, no disclosure may be made to any
6 committee or legislative body.

7 (3) Information on a pending investigation may be released to or
8 disclosed in a circuit court child custody case or similar case if:

9 (A) No seventy-two-hour hold has been exercised under this
10 subchapter, or pleadings filed pursuant to the Arkansas Juvenile Code of
11 1989, § 9-27-301 et seq.;

12 (B) Written notice of intent to request release or
13 disclosure is provided to the investigating agency at least five (5) days
14 before the date for release or disclosure;

15 (C) The investigating agency has the opportunity to appear
16 before the court and be heard on the issue of release or disclosure;

17 (D) The information gathered by the investigative agency
18 is necessary for the determination of an issue before the court;

19 (E) Waiting until completion of the investigation will
20 jeopardize the health or safety of the child in the custody case;

21 (F) A protective order is issued to prevent redisclosure
22 of the information provided by the investigating agency or the information is
23 released or disclosed only to the court in camera; and

24 (G) Release or disclosure of the information will not
25 compromise a criminal investigation.

26 (4)(A) Information on a pending investigation may be released to
27 or disclosed in the circuit court if the victim or offender has an open
28 dependency-neglect or family in need of services case before the circuit
29 court in the following circumstances:

30 (i) A petition for dependency-neglect has been filed
31 and the pending investigation is the basis in whole or part for the petition
32 for dependency-neglect;

33 (ii) The department identifies the pending
34 investigation in a court report that is provided to all of the parties before
35 the hearing; or

36 (iii) Written notice of intent to request release or

1 disclosure is provided by a party to all other parties in the matter and to
2 the investigating agency at least five (5) days before the date for release
3 or disclosure.

4 (B) The circuit court shall order release or disclosure
5 only after:

6 (i) Providing all parties and the investigating
7 agency, if not a party, the opportunity to appear before the court and be
8 heard on the issue of release or disclosure;

9 (ii) Determining that the information gathered thus
10 far by the investigative agency is necessary for the determination of an
11 issue before the court;

12 (iii) Determining that waiting until the completion
13 of the investigation will jeopardize the health and safety of the child in
14 the dependency-neglect or family in need of services case;

15 (iv) Entering a protective order to prevent
16 redisclosure of the information provided by the investigative agency or
17 limiting the release or disclosure of the information to only the court in
18 camera; and

19 (v) Determining that releasing or disclosing the
20 information will not compromise a criminal investigation.

21 (C) However, nothing in subdivision (j)(4)(B) of this
22 section limits discovery by a party if a petition for dependency-neglect has
23 been filed but not yet adjudicated.

24
25 *SECTION 4. Arkansas Code § 12-12-507(b), concerning reports of*
26 *suspected child abuse, is amended to read as follows:*

27 (b) *When any of the following has reasonable cause to suspect that a*
28 *child has been subjected to child maltreatment or has died as a result of*
29 *child maltreatment or observes a child being subjected to conditions or*
30 *circumstances that would reasonably result in child maltreatment, he or she*
31 *shall immediately notify the child abuse hotline:*

32 (1) *Any child care worker or foster care worker;*

33 (2) *A coroner;*

34 (3) *A day care center worker;*

35 (4) *A dentist;*

36 (5) *A dental hygienist;*

- 1 (6) A domestic abuse advocate;
- 2 (7) A domestic violence shelter employee;
- 3 (8) A domestic violence shelter volunteer;
- 4 (9) An employee of the Department of Health and Human Services;
- 5 (10) An employee working under contract for the Division of
- 6 Youth Services of the Department of Health and Human Services;
- 7 (11) Any foster parent;
- 8 (12) A judge;
- 9 (13) A law enforcement official;
- 10 (14) A licensed nurse;
- 11 (15) Any medical personnel who may be engaged in the admission,
- 12 examination, care, or treatment of persons;
- 13 (16) A mental health professional;
- 14 (17) An osteopath;
- 15 (18) A peace officer;
- 16 (19) A physician;
- 17 (20) A prosecuting attorney;
- 18 (21) A resident intern;
- 19 (22) A school counselor;
- 20 (23) A school official;
- 21 (24) A social worker;
- 22 (25) A surgeon;
- 23 (26) A teacher;
- 24 (27) A court-appointed special advocate program staff member or
- 25 volunteer;
- 26 (28) A juvenile intake or probation officer; ~~or~~
- 27 (29) Any clergyman, which includes a minister, priest, rabbi,
- 28 accredited Christian Science practitioner, or other similar functionary of a
- 29 religious organization, or an individual reasonably believed to be so by the
- 30 person consulting him or her, except to the extent he or she:
- 31 (A) Has acquired knowledge of suspected maltreatment
- 32 through communications required to be kept confidential pursuant to the
- 33 religious discipline of the relevant denomination or faith; or
- 34 (B) Received the knowledge of the suspected maltreatment
- 35 from the offender in the context of a statement of admission; or
- 36 (30) An employee of a child advocacy center.

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SECTION 5. Arkansas Code § 12-12-507(f), concerning reports of suspected child abuse, is amended to read as follows:

(f)(1) The child abuse hotline shall accept a report when the allegations, if true, would constitute child maltreatment as defined in § 12-12-503 and so long as sufficient identifying information is provided to identify and locate the child or the family.

(2) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur, but the report shall not be determined to be true unless the child suffered an injury as the result of the act:

- (A) Throwing, kicking, burning, biting, or cutting a child;
- (B) Striking a child with a closed fist;
- (C) Shaking a child age four (4) or older; or
- (D) Striking a child age seven (7) or older on the face or on the head.

(3) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur:

- (A) Shaking a child age three (3) or younger;
- (B) Striking a child age six (6) or younger on the face or on the head;
- (C) Interfering with a child's breathing; or
- (D) Pinching, biting, or striking a child in the genital area.

(4)(A) The child abuse hotline shall accept a report of physical abuse if a child suffers an injury as the result of a restraint.

(B) The report shall be determined not to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as provided in § 12-12-503(2)(C)(ii).

(5)(A) The child abuse hotline shall accept a report of physical abuse involving a bruise to a child even if at the time of the report the bruise is not visible if the bruising occurred:

- (i) Within the past fourteen (14) days; and
- (ii) As a result of physical abuse as described in

1 subdivisions (f)(1)-(4) of this section.

2 (B) However, the report shall not be determined to be true
3 unless the existence of the bruise is corroborated.

4 (6) The child abuse hotline shall accept a report of neglect as
5 defined under § 12-12-503(12)(B) only if the reporter is one (1) of the
6 following mandatory reporters and the reporter has reasonable cause to
7 suspect that a child has been subjected to neglect as defined under § 12-12-
8 503(12)(B):

9 (A) A licensed nurse;

10 (B) Any medical personnel who may be engaged in the
11 admission, examination, care, or treatment of persons;

12 (C) An osteopath;

13 (D) A physician;

14 (E) A resident intern; ~~or~~

15 (F) A surgeon; or

16 (G) A social worker in a hospital.

17 (7) The child abuse hotline shall accept a report of child
18 maltreatment naming an adult as the victim only if:

19 (A) The alleged offender is a caretaker of a child; and

20 (B) The person making the report is one (1) of the
21 following:

22 (i) The adult victim;

23 (ii) A law enforcement officer;

24 (iii) The adult victim's counselor or therapist; ~~or~~

25 (iv) The alleged offender's counselor or
26 therapist; or

27 (v) The alleged offender.

28
29 SECTION 6. Arkansas Code § 12-12-508 is amended to read as follows:

30 12-12-508. Radiology procedures, photographs, and medical records.

31 (a) Any person who is required to make notification under this
32 subchapter may take or cause to be taken radiology procedures and photographs
33 or compile medical records which may be probative as to the existence or
34 extent of child maltreatment.

35 (b) Hospitals and clinics may make videotapes which may be probative
36 as to the existence or extent of child maltreatment.

1 (c) The Department of Health and Human Services or law enforcement
2 officials shall be provided a copy of ~~have access to~~ the results of radiology
3 procedures, videotapes, photographs, or medical records upon request.

4 (d) The department and law enforcement officials shall be allowed
5 access to the child's public and private school records during the course of
6 the child maltreatment investigation.

7
8 SECTION 7. Arkansas Code § 12-12-509 is amended to read as follows:
9 12-12-509. Investigation - Examinations of children.

10 (a)(1) The Department of Health and Human Services shall cause an
11 investigation to be made upon receiving initial notification of suspected
12 child maltreatment.

13 (2)(A) All investigations shall begin within seventy-two (72)
14 hours.

15 (B) However, ~~if the notice contains an allegation of~~
16 ~~severe maltreatment, then~~ the investigation shall begin within twenty-four
17 (24) hours if:

18 (i) The allegation is severe maltreatment, excluding
19 an allegation of sexual abuse if the most recent allegation of sexual abuse
20 was more than one (1) year ago and the alleged victim does not currently have
21 contact with the alleged offender; or

22 (ii) The allegation is that a child has been
23 subjected to neglect as defined in § 12-12-503(12)(B).

24 (C) Notification of any report of child maltreatment will
25 be provided within five (5) business days to the:

26 (i) Legal parents of any child in foster care who is
27 named as an alleged victim or offender;

28 (ii) Attorney ad litem of any foster child named as
29 the victim or offender;

30 (iii) Attorney ad litem of all other children in the
31 same foster home if the maltreatment occurred in the foster home; and

32 ~~(iv) Local law enforcement on an allegation of~~
33 ~~severe maltreatment; and~~

34 ~~(v) The prosecuting attorney on an allegation of~~
35 severe maltreatment.

36 (D) At the initial time of contact with the alleged

1 offender, the investigator shall advise the alleged offender of the
2 allegations made against the alleged offender in a manner that is consistent
3 with the laws protecting the rights of the person who made the report.

4 (E) Upon initiation of the investigation, the primary
5 focus of the investigation shall be whether or not the alleged offender has
6 access to children and whether or not children are at risk such that children
7 need to be protected.

8 (3)(A) The prosecuting attorney may provide written notice to
9 the Department of Health and Human Services that the Department of Health and
10 Human Services does not need to provide notification of the initial
11 maltreatment report to the prosecuting attorney's office.

12 (B) Upon receiving the notification, the Department of
13 Health and Human Services shall not be required to provide notification of
14 the initial maltreatment report to the prosecuting attorney's office.

15 (b)(1) If the alleged offender is a family member or lives in the home
16 with the alleged victim, the investigation shall seek to ascertain:

17 (A) The existence, cause, nature, and extent of the child
18 maltreatment;

19 (B) The existence and extent of previous injuries;

20 (C) The identity of the person responsible for the
21 maltreatment;

22 (D) The names and conditions of other children in the
23 home;

24 (E) The circumstances of the parents or caretakers of the
25 child;

26 (F) The environment where the child resides;

27 (G) The relationship of the child or children with the
28 parents or caretakers; and

29 (H) All other pertinent data.

30 (2) If the alleged offender is not a family member nor living in
31 the home with the alleged victim, the investigation shall seek to ascertain:

32 (A) The existence, cause, nature, and extent of the
33 child's maltreatment;

34 (B) The identity of the person responsible for the
35 maltreatment;

36 (C) The existence and extent of previous maltreatment

1 perpetrated by the alleged offender;

2 (D) If the report is determined to be true, the names and
3 conditions of any minor children of the alleged offender and whether these
4 children have been maltreated or are at risk of maltreatment;

5 (E) If the report is determined to be true and is a report
6 of sexual intercourse, deviate sexual activity, or sexual contact, an
7 assessment of any other children previously or currently under the care of
8 the alleged offender, to the extent practical, and whether these children
9 have been maltreated or are at risk of maltreatment; and

10 (F) All other pertinent and relevant data.

11 (c)(1)(A) The investigation shall include interviews with the parents,
12 both custodial and noncustodial.

13 (B) If neither parent is the alleged offender, the
14 investigation shall also include an interview with the alleged offender.

15 (C) The investigation shall include an interview with any
16 other relevant persons.

17 (2)(A) The investigation shall include an interview with the
18 child separate and apart from the alleged offender or any representative or
19 attorney for the alleged offender.

20 (B) However, if the age or abilities of the child render
21 an interview impossible, the investigation shall include observation of the
22 child.

23 (3) The investigation may include a physical examination, a drug
24 test, radiology procedures, photographs, and a psychological or psychiatric
25 examination of all children subject to the care, custody, or control of the
26 alleged offender.

27 (4) If, after exercising reasonable diligence in conducting any
28 or all interviews, the subjects of the interviews cannot be located or are
29 unable to communicate, the efforts to conduct such interviews shall be
30 documented and the investigation shall proceed pursuant to this subchapter.

31 (d)(1) An investigative determination shall be made in each
32 investigation within thirty (30) days regardless of whether the investigation
33 is conducted by the Department of Health and Human Services, the Crimes
34 Against Children Division of the Department of Arkansas State Police, or
35 local law enforcement.

36 (2) However, this procedural requirement shall not be considered

1 as a factor to alter the investigative determination in any judicial or
2 administrative proceeding.

3 (3) An investigation involving an out-of-home alleged offender
4 that is determined to be true may be extended up to thirty (30) additional
5 days to allow an investigator to ascertain:

6 (A) The names and conditions of any minor children of the
7 alleged offender;

8 (B) Whether minor children of the alleged offender have
9 been maltreated or are at risk of maltreatment; and

10 (C) To the extent practicable, whether children previously
11 or currently under the care of the alleged offender have been sexually abused
12 or are at risk of sexual abuse.

13 (4) No investigation shall be transferred to inactive status
14 because an investigator is awaiting documentary evidence.

15

16 SECTION 8. Arkansas Code § 12-12-510, regarding investigative powers,
17 is amended to add an additional subsection to read as follows:

18 (h)(1) The person conducting the investigation shall have the right to
19 obtain a criminal background check, including a fingerprint-based check in
20 any national crime information database, on any subject of the report.

21 (2) The results of the criminal background check shall not be
22 disclosed outside of the department except as permitted under § 12-12-506.

23

24 SECTION 9. Arkansas Code § 12-12-512 is amended to read as follows:

25 *12-12-512. Child maltreatment investigative determination - Notice of*
26 *finding - Amendment and appeal.*

27 (a) Upon completion of the investigation, the Department of Health and
28 Human Services shall determine that the allegations of child maltreatment
29 are:

30 (1)(A)(i) Unsubstantiated.

31 (ii) This determination shall be entered when the
32 allegation is not supported by a preponderance of the evidence.

33 (B)(i) An unsubstantiated report, including protected
34 health information, shall be confidential and shall be disclosed only to:

35 (a) The prosecutor;

36 (b) A subject of the report;

1 (c) A court if the information in the record
2 is necessary for a determination of an issue before the court;

3 (d) Individual federal and state senators and
4 representatives and their staff members in their official capacities, but no
5 disclosure may be made to any committee or legislative body;

6 (e) Law enforcement agencies;

7 (f) Any appropriate licensing or registering
8 authority; ~~and~~

9 (g) Adult protective services; ~~and~~

10 (h) The Division of Developmental Disabilities
11 Services and the Division of Aging and Adult Services as to participants of
12 the waiver program.

13 (ii) Any person or agency to whom disclosure is made
14 shall not disclose to any other person a report or other information obtained
15 pursuant to subdivision (a)(1)(B)(i) of this section; or

16 (2)(A)(i) True.

17 (ii)(a) A true determination shall be entered when
18 the allegation is supported by a preponderance of the evidence.

19 (b) However, for any act or omission of
20 maltreatment which would be a criminal offense or an act of delinquency, any
21 defense or affirmative defense that would be applicable to the criminal
22 offense or delinquent act is also cognizable in a maltreatment proceeding.

23 (B)(i) A determination of true but exempted, which means
24 that the offender's name shall not be placed in the central registry, shall
25 be entered if:

26 (a) A parent practicing his or her religious
27 beliefs does not, for that reason alone, provide medical treatment for a
28 child, but in lieu of treatment the child is being furnished with treatment
29 by spiritual means alone, through prayer, in accordance with a recognized
30 religious method of healing by an accredited practitioner; or

31 (b) The offender is an underaged juvenile
32 aggressor.

33 (C)(i) Notwithstanding subdivision (a)(2)(A)(i) of this
34 section, the department may pursue:

35 (a) Any legal remedies, including the
36 authority to initiate legal proceedings in a court of competent jurisdiction;

1 and

2 (b) Medical care or treatment for a child when
3 such care or treatment is necessary to prevent or remedy serious harm to the
4 child or to prevent the withholding of medically indicated treatment from a
5 child with life-threatening conditions.

6 (ii) Except with respect to the withholding of
7 medically indicated treatments from a disabled infant with life-threatening
8 conditions, case-by-case determinations concerning the exercise of authority
9 *in this subsection shall be within the sole discretion of the department.*

10 (b) *If the investigation cannot be completed, the investigation shall*
11 *be determined incomplete and placed in inactive status.*

12 (c)(1)(A)(i) *In every case in which a report is determined to be true,*
13 *the department shall notify each subject of the report of the determination.*

14 (ii) *If the offender is a juvenile ten (10) years of*
15 *age or older and is in foster care, the department shall notify the*
16 *juvenile's public defender or counsel for the juvenile and the legal parents*
17 *or legal guardians of the offender.*

18 (iii) *If the offender is a juvenile ten (10) years*
19 *of age or older, the department shall notify the legal parents or legal*
20 *guardians of the offender.*

21 (B) *Notification shall be in writing by certified mail,*
22 *restricted delivery, or by a process server.*

23 (C) *Notification to an offender who was an adult at the*
24 *time of the act or omission that resulted in the finding of child*
25 *maltreatment shall include the following:*

26 (i) *The investigative determination,*
27 *true or unsubstantiated, exclusive of the source of the notification;*

28 (ii) *A statement that the person*
29 *named as the offender of the true report may request an administrative*
30 *hearing and the potential consequences to the person as a result of the*
31 *person's name being placed on the central registry;*

32 (iii) *A statement that the request*
33 *must be made to the department within thirty (30) days of receipt of the*
34 *service or certified mailing of the notice of determination;*

35 (iv) *The name of the person making*
36 *notification, the person's occupation, and where he or she can be reached;*

1 and

2 (v) A statement that the administrative
3 hearing may take place in person if requested by the petitioner or the
4 petitioner's attorney within thirty (30) days from the date that the
5 petitioner receives notification under this subsection (c), provided that the
6 hearing officer may conduct the hearing by video teleconference in lieu of an
7 in-person hearing. If neither party requests that the hearing be conducted in
8 person, then the hearing shall be conducted telephonically.

9 (D) Notification to an offender who was a
10 juvenile age ten (10) years of age or older at the time of the act or
11 omission that resulted in the finding of child maltreatment shall include the
12 following:

13 (i) The investigative
14 determination, true or unsubstantiated, exclusive of the source of the
15 notification;

16 (ii) A statement that the matter
17 has been referred for an automatic administrative hearing that may only be
18 waived by the juvenile offender or his parent in writing; and

19 (iii) The name of the person
20 making the notification to the juvenile offender, the person's occupation,
21 and where he or she can be reached.

22 (2) The administrative hearing process must be completed within
23 one hundred eighty (180) days from the date of the receipt of the request for
24 a hearing, or the petitioner's name shall be removed from the central
25 registry, provided that:

26 (A) Delays in completing the hearing that are
27 attributable to the petitioner shall not count against the one-hundred-
28 eighty-day limit; and

29 (B)(i) The one-hundred-eighty-day limit shall
30 not apply if there is an ongoing criminal or delinquency investigation or
31 criminal or delinquency charges have or will be filed regarding the
32 occurrence that is the subject of the child maltreatment report.

33 (ii) In those cases, the
34 administrative hearing shall be stayed pending final disposition of the
35 criminal or delinquency proceedings.

36 (iii) It shall be the duty of the

1 petitioner to report the final disposition of the criminal or delinquency
2 proceeding to the department.

3 (iv) Each report shall include a
4 file-marked copy of the criminal or delinquency disposition.

5 (v) The request for an
6 administrative hearing shall be deemed waived if the petitioner fails to
7 report the disposition of the criminal or delinquency proceedings within
8 thirty (30) days of the entry of a dispositive judgment or order.

9 (vi) If the criminal or
10 delinquency proceedings have reached no final outcome within twelve (12)
11 months of the filing of the administrative appeal, the administrative appeal
12 will be deemed waived if the petitioner fails to provide a written statement
13 of the status of the criminal or delinquency proceedings every sixty (60)
14 days and a disposition report within thirty (30) days of the entry of a
15 dispositive judgment or order.

16 (3) When the department conducts administrative appeal hearings,
17 the chief counsel of the department may require the attendance of witnesses
18 and the production of books, records, or other documents through the issuance
19 of subpoenas when that testimony or information is necessary to adequately
20 present the position of the department, the investigating protective services
21 agency, or the alleged offender or adult subject of a report.

22 (4) Upon request by a petitioner, if the petitioner prevails at
23 an administrative hearing or circuit court hearing and a report is changed
24 from true to unsubstantiated, the department shall tender a list of persons
25 to whom a disclosure had previously been made that the report was true.

26 (5)(A) If a petitioner's name is removed from the central
27 registry as a result of a failure to comply with this subsection (c), then
28 the department shall report any failures to comply with this subsection (c)
29 for each quarter to the House Interim Committee on Aging, Children and Youth,
30 Legislative and Military Affairs and the Senate Interim Committee on Children
31 and Youth.

32 (B) The quarterly report to the House Interim
33 Committee on Aging, Children and Youth, Legislative and Military Affairs and
34 the Senate Interim Committee on Children and Youth shall include a written
35 explanation of the failure of the department.

36 (d) Failure to obey the subpoena may be deemed a contempt, punishable

1 accordingly.

2 (e) Administrative hearing decisions and all exhibits submitted at the
3 hearing are confidential and may be used or disclosed only as provided in §
4 12-12-506(a)(2)(A).

5 (f)(1) The Office of Appeals and Hearings of the Department of Health
6 and Human Services shall designate the sites to be used for video
7 teleconference hearings.

8 (2) The office shall designate sites within ten (10) miles
9 of the following cities:

10 (A) Arkadelphia;

11 (B) Booneville;

12 (C) Conway;

13 (D) Fayetteville;

14 (E) Jonesboro;

15 (F) Little Rock; or

16 (G) Warren.

17 (3) The office may designate additional sites for video
18 teleconference hearings.

19 (g)(1) If any party requests an in-person hearing within thirty (30)
20 days from the date that the party receives notification under subsection (c)
21 of this section, then the in-person hearing shall be conducted in an office
22 of the department nearest to the petitioner's residence unless the hearing
23 officer notifies the parties that the hearing will be conducted via video
24 teleconference.

25 (2) A site for a video teleconference hearing shall
26 include the location designated by the office that is nearest to the
27 petitioner's residence.

28 (3) The hearing officer and other parties may agree to
29 appear at the location designated by the office or at any other designated
30 hearing locations that are convenient to them.

31 (h)(1) A certified copy of a judgment or an adjudication from a court
32 of competent jurisdiction dealing with the same subject matter as an issue
33 concerned in the administrative hearing may be filed with and considered by
34 the hearing officer in a motion for summary judgment.

35 (2)(A) A decision on any identical issue shall be rendered
36 without a hearing.

1 (B) However, if the judgment or adjudication
2 of the court is reversed or vacated and notice of the reversal or vacation is
3 provided to the department, the department shall set the matter for a
4 hearing.

5
6 SECTION 10. Arkansas Code § 12-12-516(a), regarding the protective
7 custody of children, is amended to read as follows:

8 (a)(1) A police officer, a law enforcement official, a juvenile
9 division of circuit court judge during juvenile proceedings concerning the
10 child or a sibling of the child, or a designated employee of the Department
11 of Health and Human Services may take a child into protective custody or any
12 person in charge of a hospital or similar institution or any physician
13 treating a child may keep that child in his or her custody without the
14 consent of the parent or the guardian, whether or not additional medical
15 treatment is required, if the:

16 (A) Child is ~~dependent neglected as defined in § 9-27-~~
17 ~~303(17)~~ subjected to neglect as defined under § 12-12-503(12)(B) and the
18 department assesses the family and determines that the newborn and any other
19 children, including siblings, under the custody or care of the mother are at
20 substantial risk of serious harm such that the children need to be removed
21 from the custody or care of the mother;

22 (B) Child is dependent as defined in the Arkansas Juvenile
23 Code of 1989, § 9-27-301 et seq.; or

24 (C) Circumstances or conditions of the child are such that
25 continuing in his or her place of residence or in the care and custody of the
26 parent, guardian, custodian, or caretaker presents an immediate danger of
27 severe maltreatment.

28 (2) However, such custody shall not exceed seventy-two (72)
29 hours except in the event that the expiration of seventy-two (72) hours falls
30 on a weekend or holiday, in which case protective custody may be extended
31 through the next business day following the weekend or holiday.

32
33 /s/ Madison

34
35 APPROVED: 3/28/2007