

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/24/15
A Bill

HOUSE BILL 1755

5 By: Representative V. Flowers
6

7 **For An Act To Be Entitled**

8 AN ACT TO REQUIRE NOTICE OF A CHILD MALTREATMENT
9 ALLEGATION BE GIVEN TO A PRIVATE SCHOOL OR THE
10 PARENTS OF AN ALLEGED CHILD OFFENDER IN CERTAIN
11 CIRCUMSTANCES; TO VERIFY HOW A CUSTODIAN OF RECORDS
12 SHALL RESPOND TO A SUBPOENA DUCES TECUM; AND FOR
13 OTHER PURPOSES.
14

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16 **Subtitle**

17 TO REQUIRE NOTICE OF A CHILD MALTREATMENT
18 ALLEGATION BE GIVEN TO A PRIVATE SCHOOL
19 OR A PARENT IN CERTAIN CIRCUMSTANCES; AND
20 TO VERIFY *HOW TO* RESPOND TO A SUBPOENA
21 DUCES TECUM.
22

23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 12-18-703(b)(1), concerning notice of a
27 child maltreatment allegation, is amended to read as follows:

28 (b)(1) In every case in which a report is determined to be true, the
29 department shall notify the alleged offender of the investigative
30 determination by certified mail, restricted delivery, or by process server as
31 permitted under Rule 4 of the Arkansas Rules of Civil Procedure.
32

33 SECTION 2. Arkansas Code § 12-18-909(g)(21), concerning a true report
34 of child maltreatment being provided to protect children in a school
35 environment, is amended to read as follows:

36 (21) The extent necessary to carry out a responsibility to



1 ensure that children are protected while in the school environment or during
2 off-campus school activities:

3 (A) A school district superintendent, a person in an
4 equivalent position in a private school, or other district-level
5 administrator;

6 (B) A public school principal, a person in an equivalent
7 position in a private school, or other building-level administrator;

8 (C)(i) Another person or organization designated by a
9 public school, private school, or school district to organize volunteers for
10 the public school, private school, or school district upon the submission of
11 a signed, notarized release from the volunteer.

12 (ii) The registry shall release only the following
13 information on true reports to a person or an organization:

14 (a) That the employee, applicant, or volunteer
15 has a true report;

16 (b) The date the investigation was completed;
17 and

18 (c) The type of true report; and

19 (D) The Department of Education.
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21 SECTION 3. Arkansas Code § 12-18-909(g), concerning a true report of
22 child maltreatment to be provided to certain individuals, is amended to add
23 an additional subdivision to read as follows:

24 (22) The custodial and noncustodial parents, guardians, and
25 legal custodians of the child who is identified as the offender.
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27 SECTION 4. Arkansas Code § 12-18-910(f), concerning an unsubstantiated
28 report of child maltreatment to be provided to certain individuals, is
29 amended to add an additional subdivision to read as follows:

30 (12) The custodial and noncustodial parents, guardians, and
31 legal custodians of the child who is identified as the offender.
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33 SECTION 5. Arkansas Code Title 12, Chapter 18, Subchapter 9, is
34 amended to add an additional section to read as follows:

35 12-18-911. Records – Subpoena duces tecum.

36 (a) As used in this section:

1 (1) "Custodian of records" means the administrator of the Child
2 Maltreatment Central Registry or his or her designee; and

3 (2) "Records" means data, records, or documents that are
4 created, collected, or compiled by or on behalf of the Department of Human
5 Services, the Department of Arkansas State Police, or other entity authorized
6 under this chapter to perform investigations or provide services to children,
7 individuals, or families.

8 (b)(1) A subpoena duces tecum for records shall be served on the
9 custodian of records.

10 (2)(A) When a subpoena duces tecum described in subdivision
11 (b)(1) of this section does not request the personal attendance of the
12 custodian of records and the Department of Human Services is not a party to
13 the action, the subpoena duces tecum is complied with when the custodian of
14 records delivers to the court clerk or the officer, court reporter, body, or
15 tribunal issuing the subpoena duces tecum or conducting the hearing, a true
16 and correct copy of all records described in the subpoena duces tecum and the
17 affidavit described in subsection (c) of this section.

18 (B) The records may be delivered by hand or registered
19 mail.

20 (c)(1) The records shall be accompanied by an affidavit of the
21 custodian of records stating that:

22 (A) The affiant is the duly authorized custodian of
23 records and has authority to certify the records;

24 (B) The attached copies are a true copy of all the records
25 described in the subpoena duces tecum; and

26 (C) The records were prepared by employees of the
27 Department of Humans Service or the Crimes Against Children Division of the
28 Arkansas State Police acting in the ordinary course of the business at or
29 near the time of the child maltreatment investigation reported in the
30 records.

31 (2) If the Child Maltreatment Central Registry does not have the
32 records described in the subpoena duces tecum, or only part of the records,
33 the custodian of records shall state so in the affidavit and file the
34 affidavit and records as the records are available.

35 (3) The custodian of records may enclose a statement of costs
36 pursuant to § 12-18-711 for copying the records, and the costs of copying the

1 records shall be charged to the party requesting the subpoena duces tecum for
2 the records.

3 (d)(1) The copy of the records produced by the custodian of records
4 shall be separately enclosed in an inner envelope or wrapper and sealed with
5 the title and number of the action, the name of the custodian of records, and
6 the date of the subpoena duces tecum clearly written on the inner envelope or
7 wrapper.

8 (2) The sealed outer envelope or wrapper shall be addressed as
9 follows:

10 (A) If the subpoena duces tecum directs attendance in
11 court, to the clerk or the judge of the court;

12 (B) If the subpoena duces tecum directs attendance at a
13 deposition, to the officer before whom the deposition is to be taken, at the
14 place designated in the subpoena duces tecum for the taking of the deposition
15 or at his or her place of business; and

16 (C) In other cases, to the officer, body, or tribunal
17 conducting the hearing, at a like address.

18 (e)(1)(A) The copy of the records produced by the custodian of records
19 shall remain sealed and be opened:

20 (i) At the time of trial, deposition, or hearing; or

21 (ii) Upon the direction of the judge, court,
22 officer, body, or tribunal conducting the hearing.

23 (B) Before directing that the inner envelope or wrapper be
24 opened, the judge, court, officer, body, or tribunal first shall ascertain if
25 the custodian of records is authorized to release the records under § 12-18-
26 620, § 12-18-710, § 12-18-909, or § 12-18-910.

27 (2) The records shall be opened in the presence of all parties
28 who have appeared in person or by counsel at the trial, deposition, or
29 hearing.

30 (3) When the custodian of records is ordered to appear
31 personally, he or she may open the sealed envelope or wrapper if the records
32 produced are returned.

33 (f) The copy of the records shall be admissible in evidence to the
34 same extent as though the original record was offered and the custodian of
35 records had been present and testified to the matters stated in the
36 affidavit.

1 (g)(1)(A) When the personal attendance of the custodian of records is
2 requested, the subpoena duces tecum shall contain a clause which reads: "The
3 personal attendance of the custodian of records is necessary".

4 (B) When both the personal attendance of the custodian of
5 records and the production of a copy of the records are requested, the
6 subpoena duces tecum shall contain a clause which reads: "A copy of the
7 records and the personal attendance of the custodian of records are
8 necessary".

9 (2) When the personal attendance of the custodian of records is
10 requested, the reasonable cost of producing the records and expenses for
11 personal attendance shall be charged to the party requesting the subpoena
12 duces tecum.

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15 */s/V. Flowers*

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18 **APPROVED: 04/06/2015**

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