

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Pollan**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO REVISE THE LAWS OF ARKANSAS RELATING TO THE  
9 REPORTING AND INVESTIGATION OF CHILD MALTREATMENT; AND FOR  
10 OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13

14 SECTION 1. Purpose. It is the purpose of this subchapter, through the  
15 use of complete reporting of child abuse, to protect the best interest of the  
16 child, to prevent further harm to the child, to stabilize the home  
17 environment, to preserve family life, and to encourage cooperation among the  
18 states in dealing with child abuse.

19

20 SECTION 2. Definitions. As used in this subchapter, unless the context  
21 otherwise requires:

22 (a) "Child" means any person under eighteen (18) years of age, and in  
23 sections of this subchapter which refer to the Juvenile Code, shall be used  
24 interchangeably with the word "juvenile" in the Juvenile Code;

25 (b) "Parent" shall have the same meaning as set forth in the Arkansas  
26 Juvenile Code;

27 (c) "Child Maltreatment" means abuse, sexual abuse, neglect, sexual  
28 exploitation, or abandonment;

29 (d) "Abuse" shall have the same meaning as set forth in the Arkansas  
30 Juvenile Code;

31 (e) "Sexual Abuse" shall have the same meaning as set forth in the  
32 Arkansas Juvenile Code;

33 (f) "Neglect" shall have the same meaning as set forth in the Arkansas  
34 Juvenile Code;

35 (g) "Sexual Exploitation" shall have the same meaning as set forth in

1 the Arkansas Juvenile Code;

2 (h) "Abandonment" shall have the same meaning as set forth in the  
3 Arkansas Juvenile Code;

4 (i) "Caretaker" means a parent, guardian, custodian, foster parent, or  
5 any person ten (10) years of age or older who is entrusted with a child's care  
6 by a parent, guardian, custodian, or foster parent, including, but not limited  
7 to, an agent or employee of a public or private residential home, child care  
8 facility, public or private school, or any person legally responsible for a  
9 child's welfare;

10 (j) "Severe Maltreatment" means sexual abuse, sexual exploitation, acts  
11 or omissions which may or do result in death, abuse involving the use of a  
12 deadly weapon as defined by the Arkansas Criminal Code, bone fracture,  
13 internal injuries, burns, immersions, suffocation, abandonment, medically  
14 diagnosed failure to thrive, or abuse or neglect causing a substantial and  
15 observable change in the behavior or demeanor of the child;

16 (k) "Department" means the Arkansas Department of Human Services;

17 (l) "Subject of the report" means the perpetrator, the parents and  
18 caretakers of the child who is subject to suspected maltreatment, and the  
19 child who is the subject of suspected maltreatment; and

20 (m) "Central Intake" refers to a unit which shall be established by the  
21 Department of Human Services for the purpose of receiving and recording  
22 notification made pursuant to this act. Central intake shall be staffed  
23 twenty-four (24) hours per day and shall have statewide accessibility through  
24 a toll free telephone number.

25

26 SECTION 3. Notification. (a) Any person with reasonable cause to  
27 suspect child maltreatment, or that a child has died as a result of child  
28 maltreatment, or who observes a child being subjected to conditions or  
29 circumstances which would reasonably result in child maltreatment should  
30 immediately notify central intake or law enforcement.

31 (b) When any physician, surgeon, coroner, dentist, osteopath, resident  
32 intern, licensed nurse, medical personnel who may be engaged in admission,  
33 examination, care, or treatment of persons, teacher, school official, school  
34 counselor, social worker, family service worker, day care center worker or any  
35 other child or foster care worker, mental health professional, peace officer,

1 or law enforcement official has reasonable cause to suspect that a child has  
2 been subjected to child maltreatment, or that a child has died as a result of  
3 child maltreatment, or who observes the child being subjected to conditions or  
4 circumstances which would reasonably result in child maltreatment, he shall  
5 immediately notify central intake or law enforcement.

6 (c) No privilege or contract shall relieve anyone required by this act  
7 to make notification of the requirement of making notification.

8 (d) In the event that central intake receives notification that a  
9 client or a resident of any facility licensed or registered by the State of  
10 Arkansas has been subjected to child maltreatment while at such facility,  
11 central intake shall immediately notify that facility's licensing or  
12 registering authority of its receipt of initial notification of suspected  
13 maltreatment.

14

15 SECTION 4. Investigation. (a) An investigation shall be made upon  
16 receiving initial notice of suspected child maltreatment. All investigations  
17 shall begin within seventy-two (72) hours. However, if the notice involves  
18 severe maltreatment then the department shall immediately notify law  
19 enforcement. The department shall initiate an investigation in cooperation  
20 with law enforcement agencies and the prosecuting attorney within twenty-four  
21 (24) hours.

22 (b) When a person, agency, corporation or partnership then providing  
23 substitute care for any child in the custody of the department, or a  
24 department employee or employee's spouse or other person residing in the home  
25 is reported as being suspected of child maltreatment the investigation shall  
26 be conducted pursuant to procedures established by the department. Such  
27 procedures shall include referral of allegations to the Arkansas State Police  
28 or appropriate law enforcement agency should the allegation involve severe  
29 maltreatment.

30 (c) The investigation shall seek to ascertain the existence, cause,  
31 nature and extent of the child maltreatment; the existence and extent of  
32 previous injuries; the identity of the person responsible therefore; the names  
33 and conditions of other children in the home; the circumstances of the parents  
34 or caretakers of the child; the environment where the child resides, and the  
35 relationship of the child or children with the parents or caretakers; and all

1 other pertinent data.

2 (d) The investigation shall include an interview with the parent(s),  
3 and the caretakers at the time and place of the alleged maltreatment of the  
4 alleged perpetrator. However, if after the exercise of reasonable diligence,  
5 the parent(s), caretakers and place of maltreatment, and the alleged  
6 perpetrator, cannot be located or is/are unable to communicate, then efforts  
7 to conduct an interview shall be documented, whereupon the investigation shall  
8 proceed pursuant to this subchapter.

9 (e) The investigation shall include an interview with the child.  
10 However, if the age or abilities of the child render an interview impossible,  
11 the investigation shall include observation of the child.

12 (f) The investigation may include a physical examination and a  
13 psychological or psychiatric examination of all children subject to the care,  
14 custody or control of the same caretaker.

15 (g) The person conducting the investigation shall have the right to  
16 enter into or upon the home, school, or other place, for the purpose of  
17 conducting an interview or completing the investigation required by this  
18 subchapter. If necessary access or admission is denied, upon petition to the  
19 proper Juvenile Division of the Chancery Court, the court shall order the  
20 parents, caretaker or persons denying access to any place where the child may  
21 be, to allow entrance for the interviews, examinations and investigations.  
22 However, upon application to the court showing good cause, the order may be  
23 stayed pending a hearing to be held within seventy-two (72) hours.

24 (h) If at any time before or during the investigation it is determined  
25 that the alleged perpetrator is not a caretaker of any child and the alleged  
26 victim has attained majority prior to notification, the investigation shall be  
27 closed.

28 (i) If at any time before or during the investigation it appears that  
29 the perpetrator is identified and is not a caretaker of any child, the  
30 department shall refer the matter to the appropriate law enforcement agency,  
31 shall conclude its investigation, and shall forward a copy of its findings to  
32 the appropriate law enforcement agency for that agency's further use in any  
33 criminal investigation. If the appropriate law enforcement agency  
34 subsequently determines that the perpetrator is a caretaker, it shall  
35 immediately notify the department of its determination. Thereupon the

1 department shall reopen and continue its investigation in compliance with all  
2 other requirements contained in this subchapter.

3 (j) An investigative determination shall be made in each investigation  
4 within thirty (30) days. However, this procedural requirement shall not be  
5 considered as a factor to alter the investigative determination in any  
6 judicial or administrative proceeding.

7

8 SECTION 5. Investigative Determination. (a) Upon completion of the  
9 investigation the department shall determine that the allegations of child  
10 maltreatment are:

11 (1) Unfounded. This determination shall be entered when no  
12 evidence worthy of belief exists in support of the allegations; or

13 (2) Supported by some credible evidence. This determination  
14 shall be entered when some evidence worthy of belief exists in support of the  
15 allegations; or

16 (3) Founded. This determination shall be entered when evidence  
17 in support of the allegations is more convincing than the opposing evidence.

18 (b) If the investigation cannot be completed, the investigation shall  
19 be determined incomplete and placed in inactive status.

20

21 SECTION 6. Investigative Report. (a) The department shall make a  
22 complete written report of the investigation. The report shall include the  
23 following information:

24 (1) The names and addresses of the child and his legal parents  
25 and other caretakers of the child, if known;

26 (2) The child's age, sex and race;

27 (3) The nature and extent of the child's present and past  
28 injuries;

29 (4) The investigative determination;

30 (5) The nature and extent of the child maltreatment including any  
31 evidence of previous injuries or child maltreatment to the child or his  
32 siblings;

33 (6) The name and address of the person responsible for the  
34 injuries or child maltreatment, if known;

35 (7) Services offered and accepted;

- 1           (8) Family composition;
- 2           (9) The source of the notification; and
- 3           (10) The person making the notification, his occupation, and where
- 4 he can be reached.

5           (b) A copy of the written report shall immediately be filed with the  
6 appropriate law enforcement agency, the prosecuting attorney's office, and the  
7 Central Registry. In the event the investigation is not conducted by the  
8 department or its agents, the investigator shall immediately file a copy of  
9 the report with the department.

10          (c) Notwithstanding any other provisions of this act, the adult  
11 subjects of the report, upon request, shall be notified of the conclusion of  
12 the investigation.

13          (d) The report, exclusive of information identifying the person making  
14 the notification, shall be admissible in evidence in any proceeding related to  
15 child maltreatment.

16

17          SECTION 7. Appeals and Amendments. (a) In every case where a report  
18 is determined to be founded the department shall notify each adult subject of  
19 the report of the determination. Notification may be by hand delivery or by  
20 regular mail. Such notification shall include the following:

21                 (1) A statement that an adult subject of the report may request  
22 the department to amend information contained in a report in order to correct  
23 error or false statement, and

24                 (2) A statement that such request must be made within thirty (30)  
25 days of the receipt of the notice of determination by an adult subject of the  
26 report.

27          (b) If the request is denied, the alleged perpetrator or adult subject  
28 to the report may, within thirty (30) days of receipt of notice of the denial,  
29 file a written request for an administrative hearing.

30          (c) The hearing process must be completed within ninety (90) days from  
31 the date of the receipt of the request for a hearing.

32          (d) No action by appeal or otherwise shall be brought more than two (2)  
33 years after the completion of the investigation.

34          (e) (1) When the department conducts such administrative appeal  
35 hearings, the chief counsel of the department is authorized to require the

1 attendance of witnesses and the production of books, records, or other  
2 documents through the issuance of subpoenas when such testimony or information  
3 is necessary to adequately present the position of the Department of Human  
4 Services, the investigating protective services agency, or the alleged  
5 perpetrator or adult subject of a report.

6 (2) Requests for subpoenas shall be granted by the chief counsel  
7 of the department if the testimony or documents desired are considered  
8 necessary and material without being unduly repetitious of other available  
9 evidence.

10 (3) Subpoenas issued pursuant to the authority of the chief  
11 counsel of the department shall be substantially in the following form:

12 "The State of Arkansas to the Sheriff of \_\_\_\_\_ County:

13 You are commanded to subpoena

14 (name) \_\_\_\_\_,

15 (address) \_\_\_\_\_, to attend a proceeding

16 before the Arkansas Department of Human Services to be held at \_\_\_\_\_

17 on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_ M., and testify

18 and/or produce the following books, records, or other documents, to-

19 wit: \_\_\_\_\_

20 \_\_\_\_\_

21 in the matter of (style of proceeding) \_\_\_\_\_

22 being conducted under the authority of \_\_\_\_\_

23 \_\_\_\_\_.

24 WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

25

26

\_\_\_\_\_  
Chief Counsel, Department of Human Services

27 (f) (1) Subpoenas provided for in this section shall be served in the  
28 manner as now provided by law and returned and a copy made and kept by the  
29 Department of Human Services.

30 (2) The fees and mileage for officers serving the subpoenas and  
31 witnesses answering the subpoenas shall be the same as now provided by law.

32 (3) Witnesses duly served with subpoenas issued pursuant to the  
33 authority provided in this section who shall refuse to testify or give  
34 evidence may be cited on affidavit through application of the chief of counsel  
35

1 of the department to the circuit court of Pulaski County or any circuit court  
2 of the state where the subpoenas were served. Failure to obey the subpoena  
3 may be deemed a contempt, punishable accordingly.

4

5 SECTION 8. Central Registry. (a) There is established within the  
6 Department of Human Services a statewide central registry for the collection  
7 of information relative to child maltreatment gathered pursuant to this  
8 subchapter.

9 (b) The central registry shall contain, but shall not be limited to:

10 (1) Notification submitted pursuant to Section 3 of this act.

11 (2) All the information in the written report.

12 (3) The names and identifying data, dates, and circumstances of  
13 any persons requesting or receiving information from the registry.

14

15 SECTION 9. Disclosure of Central Registry Data. (a) Reports made  
16 pursuant to this subchapter, shall be confidential and may be used or  
17 disclosed only as provided in this section. If the allegations are determined  
18 to be founded in accordance with Section 5 of this subchapter, disclosure is  
19 limited to:

20 (1) The administration of the adoption, foster care, children's  
21 protective services programs, or child care licensing programs of any state;

22 (2) Any investigation or prosecution conducted in connection with  
23 the administration of the Arkansas Child Welfare State Plan;

24 (3) Any person who is the subject of a report;

25 (4) A civil or administrative proceeding connected with the  
26 administration of the Arkansas Child Welfare State Plan where the court or  
27 board determines the information is necessary for the determination of an  
28 issue before the court;

29 (5) The administration of any federal or federally assisted  
30 program which provides assistance, in cash or in kind, or services directly to  
31 individuals on the basis of need; and

32 (6) An audit or similar activity conducted in connection with the  
33 administration of such plan or program by any governmental agency which is  
34 authorized by law to conduct the audit or activity.

35 (b) If the allegations are determined to be supported by some credible



1 evidence, or determined to be unfounded, the report may be used only within  
2 the Department of Human Services for purposes of the administration of  
3 adoption, foster care, and children protective services programs, or child  
4 care licensing programs.

5 (c) Any licensing or registering authority in receipt of initial  
6 notification of suspected child maltreatment may excess the central registry  
7 to the extent necessary to carry out its official responsibilities.

8 (d) Any person or agency to whom disclosure is made shall not disclose  
9 to any other person reports or other information obtained pursuant to this  
10 subdivision. Any person disclosing such information shall be guilty of a  
11 Class C misdemeanor.

12 (e) Disclosure is prohibited to any committee or legislative body,  
13 other than an agency referred to in Section 4 of this act, with respect to an  
14 activity referred to in data that will identify the person who made the  
15 initial notification of suspected child maltreatment or who cooperated in a  
16 subsequent investigation unless a court of competent jurisdiction orders  
17 release of the information for good cause shown. However, the information  
18 shall be disclosed to the prosecuting attorney or law enforcement officers  
19 upon request.

20 (f) The department shall, within thirty (30) days of the investigative  
21 determination, attempt to provide the following information to persons making  
22 initial notification of suspected child maltreatment:

23 (1) whether an investigation has been conducted, and whether  
24 services have been offered;

25 (2) the investigative determination, if the person making initial  
26 notification of suspected child maltreatment was required to do so by this  
27 act;

28 (3) the services offered and provided, if the person making  
29 initial notification of suspected child maltreatment was required to do so by  
30 this act and has continuing contact with the child.

31 (g) Records of all cases where allegations are determined to be founded  
32 or determined to be supported by some credible evidence, which are retained by  
33 the central registry in accordance with the terms of this subchapter, shall be  
34 sealed when the youngest minor subject of the report reaches the age of  
35 twenty-one (21) years. Once sealed, the records shall not otherwise be

1 available unless the department, upon notice to the subjects of the report,  
2 gives approval for an appropriate reason. Records of cases where allegations  
3 are determined to be unfounded shall be destroyed within three (3) years.

4 (h) Central registry may adopt such rules and regulations as may be  
5 necessary to encourage cooperation with other states in exchanging reports,  
6 and to affect a national registration system.

7

8 SECTION 10. Protective Custody of Children. (a) A police officer, a  
9 law enforcement official, or a designated employee of the Department of Human  
10 Services, may take a child into protective custody, or any person in charge of  
11 a hospital or similar institution or any physician treating a child may keep  
12 that child in his custody without the consent of the parent or the guardian,  
13 whether or not additional medical treatment is required, if the circumstances  
14 or conditions of the child are such that continuing in his place of residence  
15 or in the care and custody of the parent, guardian, custodian, or caretaker  
16 presents an immediate danger of severe maltreatment. However, such custody  
17 shall not exceed seventy-two (72) hours, except in the event that the  
18 expiration of seventy-two (72) hours falls on a weekend or holiday, in which  
19 case, protective custody may be extended through the next business day  
20 following the weekend or holiday.

21 (b) The individual or agency taking the child into protective custody  
22 may give effective consent for medical, dental, health, and hospital services  
23 during protective custody.

24 (c) In any case in which protective custody is invoked the individual  
25 or agency taking the child into protective custody shall file a petition or  
26 cause a petition to be filed in the appropriate Juvenile Court or shall return  
27 the child.

28

29 SECTION 11. Good Faith Actions. All persons acting in good faith  
30 pursuant to this act shall be absolutely immune to suit and to liability.

31

32 SECTION 12. Penalties. (a) Any person, official, or institution  
33 willfully making false notification pursuant to this act knowing such  
34 allegations to be false or negligently or willfully failing to make  
35 notification when required by this act shall be guilty of a Class C

1 misdemeanor.

2 (b) Any person, official, or institution required by this subchapter to  
3 report a case of suspected child maltreatment who willfully fails to do so,  
4 shall be civilly liable for damages proximately caused by that failure.

5 (c) Any person who willfully permits, and any other person who  
6 encourages, the release of data or information contained in the central  
7 registry to persons not permitted by this subchapter, shall be guilty of a  
8 Class A misdemeanor.

9

10 SECTION 13. Privileged Communications as Evidence - Exception. (a) It  
11 is the public policy of the State of Arkansas to protect the health, safety,  
12 and the welfare of minors within the state. In order to effectuate that  
13 policy:

14 (1) No privilege, except the lawyer/client privilege shall  
15 preclude the introduction of any relevant testimony in a proceeding concerning  
16 child maltreatment, regardless of whether the proceeding is in Juvenile Court  
17 or is administrative;

18 (2) When any physician, psychologist, psychiatrist, or licensed  
19 counsellor or therapist conducts interviews with or provides therapy to any  
20 subject of a report of a suspected child maltreatment for purposes related to  
21 child maltreatment, the physician, psychologist, psychiatrist, or licensed  
22 counsellor or therapist shall be deemed to be performing services on behalf of  
23 the child. Adult subjects of a report of suspected child maltreatment cannot  
24 invoke privilege on the child's behalf.

25 (3) Testimony introduced in a child maltreatment proceeding  
26 pursuant to this section shall not be received into evidence in any other  
27 civil or criminal proceeding.

28

29 SECTION 14. Miscellaneous. (a) The director of the department shall  
30 promulgate regulations to implement the provisions of this act.

31 (b) The director of the department shall initiate formal cooperative  
32 agreements with law enforcement agencies, prosecuting attorneys, and other  
33 appropriate agencies and individuals in order to implement a coordinated  
34 multidisciplinary team-approach to intervention in reports involving severe  
35 maltreatment.

1

2           SECTION 15. All provisions of this act of a general and permanent  
3 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
4 Code Revision Commission shall incorporate the same in the Code.

5

6           SECTION 16. If any provision of this act or the application thereof to  
7 any person or circumstance is held invalid, such invalidity shall not affect  
8 other provisions or applications of the act which can be given effect without  
9 the invalid provision or application, and to this end the provisions of this  
10 act are declared to be severable.

11

12           SECTION 17. Ark. Code Ann. 12-12-501 through 12-12-516 inclusive, and  
13 all laws and parts of laws in conflict with this act are hereby repealed.