

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Flanagin**

A Bill

ACT 1126 OF 1993
HOUSE BILL 1996

For An Act To Be Entitled

8 "AN ACT TO AMEND THE JUVENILE CODE, TITLE 9, CHAPTER 27 OF
9 THE ARKANSAS CODE AND THE CHILD MALTREATMENT ACT, TITLE
10 12, CHAPTER 12 OF THE ARKANSAS CODE TO CLARIFY THAT THE
11 STATE HAS THE AUTHORITY TO ENSURE THAT A CHILD RECEIVES
12 MEDICAL SERVICES WHEN THE PARENTS DO NOT SEEK MEDICAL
13 SERVICES AND TO CLARIFY DEFINITIONS OF ABUSE AND NEGLECT;
14 TO AMEND ARKANSAS CODE 5-27-221 TO REPEAL THE RELIGIOUS
15 EXEMPTION FROM CRIMINAL PERMISSIVE ABUSE OF A CHILD; AND
16 FOR OTHER PURPOSES."

Subtitle

18 "STATE HAS THE AUTHORITY TO ENSURE THAT A CHILD RECEIVES
19 MEDICAL CARE WHEN THE PARENTS DO NOT SEEK MEDICAL CARE."
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Arkansas Code 9-27-303(4) is amended to read as follows:

25 "(4) Abuse means any of the following acts or omissions by a parent,
26 guardian, custodian, foster parent, or any person who is entrusted with the
27 juvenile's care by a parent, guardian, custodian, or foster parent, including,
28 but not limited to, an agent or employee of a public or private residential
29 home, child care facility, public or private school, or any person legally
30 responsible for the juvenile's welfare:

31 (A) Extreme and repeated cruelty to a juvenile; or

32 (B) Physical, psychological, or sexual abuse of any juvenile
33 which includes, but is not limited to, intentionally, knowingly, or
34 negligently and without justifiable cause:

35 (i) Engaging in conduct creating a substantial possibility
36 of death, permanent or temporary disfigurement, illness, impairment of any

1 bodily organ, or an observable and substantial impairment in the intellectual
2 or psychological capacity of the juvenile to function within his normal range
3 of performance and behavior with due regard to his culture;

4 (ii) Any nonaccidental physical injury or mental injury; or
5 (iii) Any injury which is at variance with the history
6 given."

7

8 SECTION 2. Arkansas Code 9-27-303(23) is amended to read as follows:

9 "(23) Neglect means those acts or omissions, of a parent, guardian,
10 custodian, foster parent, or any person who is entrusted with the juvenile's
11 care by a parent, custodian, guardian, or foster parent, including, but not
12 limited to, an agent or employee of a public or private residential home,
13 child care facility, public or private school, or any person legally
14 responsible under state law for the juvenile's welfare which constitute:

15 (A) Failure or refusal to prevent the abuse of the juvenile when
16 such person knows or has reasonable cause to know the juvenile is or has been
17 abused;

18 (B) Failure or refusal to provide the necessary food, clothing,
19 shelter, and education required by law, or medical treatment necessary for the
20 juvenile's well-being, except when the failure or refusal is caused primarily
21 by the financial inability of the person legally responsible and no services
22 for relief have been offered or rejected;

23 (C) Failure to take reasonable action to protect the juvenile
24 from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or
25 parental unfitness where the existence of such condition was known or should
26 have been known;

27 (D) Failure or irremedial inability to provide for the essential
28 and necessary physical, mental, or emotional needs of the juvenile;

29 (E) Failure to provide for the juvenile's care and maintenance,
30 proper or necessary support, or medical, surgical, or other necessary care; or

31 (F) Failure, although able, to assume responsibility for the care
32 and custody of the juvenile or participate in a plan to assume such
33 responsibility."

34

35 SECTION 3. Arkansas Code 12-12-503(4) is amended to read as follows:

1 "(4) Abuse means any of the following acts or omissions by a parent,
2 guardian, custodian, foster parent, or any person who is entrusted with the
3 juvenile's care by a parent, guardian, custodian, or foster parent, including,
4 but not limited to, an agent or employee of a public or private residential
5 home, child care facility, public or private school, or any person legally
6 responsible for the juvenile's welfare:

7 (A) Extreme and repeated cruelty to a juvenile; or

8 (B) Physical, psychological, or sexual abuse of any juvenile
9 which includes, but is not limited to, intentionally, knowingly, or
10 negligently and without justifiable cause:

11 (i) Engaging in conduct creating a substantial possibility
12 of death, permanent or temporary disfigurement, illness, impairment of any
13 bodily organ, or an observable and substantial impairment in the intellectual
14 or psychological capacity of the juvenile to function within his normal range
15 of performance and behavior with due regard to his culture;

16 (ii) Any nonaccidental physical injury or mental injury; or

17 (iii) Any injury which is at variance with the history
18 given;"

19

20 SECTION 4. Arkansas Code 12-12-503(6) is amended to read as follows:

21 "(6) Neglect means those acts or omissions, of a parent, guardian,
22 custodian, foster parent, or any person who is entrusted with the juvenile's
23 care by a parent, custodian, guardian, or foster parent, including, but not
24 limited to, an agent or employee of a public or private residential home,
25 child care facility, public or private school, or any person legally
26 responsible under state law for the juvenile's welfare, which constitute:

27 (A) Failure or refusal to prevent the abuse of the juvenile when
28 such person knows or has reasonable cause to know the juvenile is or has been
29 abused;

30 (B) Failure or refusal to provide the necessary food, clothing,
31 shelter, and education required by law, or medical treatment necessary for the
32 juvenile's well-being, except when the failure or refusal is caused primarily
33 by the financial inability of the person legally responsible and no services
34 for relief have been offered or rejected;

35 (C) Failure to take reasonable action to protect the juvenile

1 from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or
2 parental unfitness where the existence of such condition was known or should
3 have been known;

4 (D) Failure or irremedial inability to provide for the essential
5 and necessary physical, mental, or emotional needs of the juvenile;

6 (E) Failure to provide for the juvenile's care and maintenance,
7 proper or necessary support, or medical, surgical, or other necessary care; or

8 (F) Failure, although able, to assume responsibility for the care
9 and custody of the juvenile or participate in a plan to assume such
10 responsibility."

11

12 SECTION 5. Arkansas Code 12-12-503(10) is amended to read as follows:

13 "(10) Severe maltreatment means sexual abuse, sexual exploitation,
14 acts or omissions which may or do result in death, abuse involving the use of
15 a deadly weapon as defined by the Arkansas Criminal Code, § 5-1-101 et seq.,
16 bone fracture, internal injuries, burns, immersions, suffocation, abandonment,
17 medical diagnosis of failure to thrive, or causing a substantial and
18 observable change in the behavior or demeanor of the child;"

19

20 SECTION 6. Arkansas Code 12-12-507 is amended by adding a new
21 subsection (f) to read as follows:

22 "(f) Any person required to notify central intake or law enforcement
23 under subsection (b) of this section shall report all incidents of suspected
24 child maltreatment without regard to the parent_s practice of his religious
25 beliefs and shall only consider whether the acts or omissions of the parent
26 are allegedly abuse or neglect as defined in §§ 9-27-303(4), 9-27-303(23), 12-
27 12-503(4), 12-12-503(6), and 12-12-503(10)."

28

29 SECTION 7. Arkansas Code 12-12-510 is amended by adding a new
30 subsection (d) to read as follows:

31 "(d) The department shall investigate all allegations of child
32 maltreatment without regard to the parent_s practice of his religious beliefs
33 and shall only consider whether the acts or omissions of the parent are
34 abusive or neglectful as defined by the Arkansas Code."

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1 SECTION 8. Arkansas Code 12-12-512(a) is amended to read as follows:

2 "12-12-512. Investigative determination - Notice of finding - Amendment
3 and appeal.

4 (a) Upon completion of the investigation the department shall determine
5 that the allegations of child maltreatment are:

6 (1) Unfounded: This determination shall be entered when the
7 allegation is not supported by some credible evidence;

8 (2) Founded: This determination shall be entered when the
9 allegation is supported by some credible evidence;

10 (A) A determination of _founded_ shall not be entered when
11 a parent, practicing his religious beliefs, does not, for that reason alone,
12 provide medical treatment for a child, but in lieu of such treatment the child
13 is being furnished with treatment by spiritual means alone, through prayer, in
14 accordance with a recognized religious method of healing by an accredited
15 practitioner.

16 (B) Such prohibition shall not limit the administrative or
17 judicial authority of the State to ensure that medical services are provided
18 to the child when his health requires it."

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20 SECTION 9. Arkansas Code 5-27-221 is amended to read as follows:

21 "5-27-221. Permitting abuse of a child.

22 (a) (1) A person commits the offense of permitting abuse of a child if,
23 being a parent, guardian, or person legally charged with the care or custody
24 of a child, he recklessly fails to take action to prevent the abuse of a child
25 who is less than eleven (11) years old.

26 (2) It is a defense to a prosecution for the offense of
27 permitting abuse of a child if the parent, guardian, or person legally charged
28 with the care or custody of the child takes immediate steps to end the abuse
29 of the child including prompt notification of medical or law enforcement
30 authorities upon first knowing or having good reason to know that abuse has
31 occurred.

32 (3) Permitting abuse of a child is a Class C felony if the abuse
33 of the child consisted of sexual intercourse or deviate sexual activity, or
34 caused serious physical injury or death to the child.

35 (4) Permitting abuse of a child is a Class A misdemeanor if the

1 abuse of the child consisted of sexual contact or caused physical injury to
2 the child.

3 (b) For the purposes of this section, _abuse_ means any physical injury
4 inflicted on a child other than by accidental means or any act that involves
5 sexual molestation or exploitation."
6

7 SECTION 10. All provisions of this act of a general and permanent
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
9 Code Revision Commission shall incorporate the same in the Code.
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11 SECTION 11. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.
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17 SECTION 12. All laws and parts of laws in conflict with this act are
18 hereby repealed.
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20 SECTION 13. *This act shall become effective on September 1, 1993.*
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28 /s/Pat Flanagan

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30 APPROVED: 04/13/93
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