

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.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/17/03

A Bill

Act 758 of 2003
HOUSE BILL 1636

5 By: Representative Dees
6
7

For An Act To Be Entitled

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

Subtitle

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

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

19 SECTION 1. Arkansas Code § 12-12-501(b), concerning the purposes of
20 the Child Maltreatment Act, is amended to read as follows:

21 (b) It is the purpose of this subchapter, ~~through the use of complete~~
22 ~~reporting of child abuse,~~ to:

23 ~~(1) Protect the best interest of the child;~~

24 ~~(2) Prevent further harm to the child;~~

25 ~~(3) Stabilize the home environment;~~

26 ~~(4) Preserve family life; and~~

27 ~~(5) Encourage cooperation among the states in dealing with child~~

28 ~~abuse.~~

29 (1) Provide a system for the reporting of known or suspected
30 child maltreatment;

31 (2) Ensure the immediate screening, safety assessment, and
32 prompt investigation of reports of known or suspected child maltreatment;

33 (3) Ensure that immediate steps are taken to:

34 (A) Protect the maltreated child and any other child under
35 the same care who may also be in danger of maltreatment; and

36 (B) Place children who are in immediate danger of severe



1 maltreatment in a safe environment;

2 (4) Provide for immunity from criminal prosecution for those
3 individuals making good faith reports of suspected child maltreatment;

4 (5) Preserve the confidentiality of all records in order to
5 protect the rights of the child and of the child's parents or guardians;

6 (6) Encourage the cooperation of state law enforcement
7 officials, courts, and state agencies in the investigation, assessment,
8 prosecution, and treatment of child maltreatment; and

9 (7) Stabilize the home environment if the juvenile's health and
10 safety are not at risk;

11
12 SECTION 2. Arkansas Code § 12-12-503 is amended to read as follows:
13 12-12-503. Definitions.

14 As used in this subchapter, unless the context otherwise requires:

15 (1)(A) "Abandonment" means:

16 ~~(A)(i)~~ Failure of the parent to provide reasonable support
17 and to maintain regular contact with the juvenile through statement or
18 contact when the failure is accompanied by an intention on the part of the
19 parent to permit the condition to continue for an indefinite period in the
20 future;

21 ~~(B)(ii)~~ Failure to support or maintain regular contact
22 with the juvenile without just cause; ~~or~~

23 ~~(C)(iii)~~ An articulated intent to forego parental
24 responsibility; and

25 (B) "Abandonment" does not include acts or omissions of a parent
26 toward a married minor.

27 (2)(A) "Abuse" means any of the following acts or omissions by a
28 parent, guardian, custodian, foster parent, person eighteen (18) years of age
29 or older living in the home with a child whether related or unrelated to the
30 child, or any person who is entrusted with the juvenile's care by a parent,
31 guardian, custodian, or foster parent, including, but not limited to, an
32 agent or employee of a public or private residential home, child care
33 facility, public or private school, or any person legally responsible for the
34 juvenile's welfare but excluding the spouse of a minor:

35 (i) Extreme or repeated cruelty to a juvenile;

36 (ii) Engaging in conduct creating a realistic and serious

1 threat of death, permanent or temporary disfigurement, or impairment of any
2 bodily organ;

3 (iii) Injury to a juvenile's intellectual, emotional, or
4 psychological development as evidenced by observable and substantial
5 impairment of the juvenile's ability to function within the juvenile's normal
6 range of performance and behavior;

7 (iv) Any injury that is at variance with the history
8 given;

9 (v) Any nonaccidental physical injury;

10 (vi) Any of the following intentional or knowing acts,
11 with physical injury and without justifiable cause:

12 (a) Throwing, kicking, burning, biting, or cutting a
13 child;

14 (b) Striking a child with a closed fist;

15 (c) Shaking a child; or

16 (d) Striking a child on the face or head;

17 (vii) Any of the following intentional or knowing acts,
18 with or without physical injury:

19 (a) Striking a child age six (6) or younger on the
20 face or head;

21 (b) Shaking a child age three (3) or younger; ~~or~~

22 (c) Interfering with a child's breathing; or

23 (d) Pinching or striking a child in the genital
24 area.

25 (B)(i) The list in subdivision (2)(A) of this section is
26 illustrative of unreasonable action and is not intended to be exclusive.

27 (ii) No unreasonable action shall be construed to permit a
28 finding of abuse without having established the elements of abuse.

29 (C)(i) "Abuse" shall not include physical discipline of a child
30 when it is reasonable and moderate and is inflicted by a parent or guardian
31 for purposes of restraining or correcting the child.

32 (ii) "Abuse" shall not include when a child suffers
33 transient pain or minor temporary marks as the result of an appropriate
34 restraint if:

35 (a) The person exercising the restraint is an
36 employee of an agency licensed or exempted from licensure under the Child

1 Welfare Agency Licensing Act, § 9-28-401 et seq.;

2 (b) The agency has policy and procedures regarding
3 restraints;

4 (c) No other alternative exists to control the child
5 except for a restraint;

6 (d) The child is in danger or hurting himself or
7 herself or others;

8 (e) The person exercising the restraint has been
9 trained in properly restraining children, de-escalation, and conflict
10 resolution techniques; and

11 (f) The restraint is for a reasonable period of
12 time.

13 (iii) Reasonable and moderate physical discipline
14 inflicted by a parent or guardian shall not include any act that is likely to
15 cause and which does cause injury more serious than transient pain or minor
16 temporary marks.

17 (iv) The age, size, and condition of the child and the
18 location of the injury and the frequency or recurrence of injuries shall be
19 considered when determining whether the physical discipline is reasonable or
20 moderate;

21 (3) "Caretaker" means a parent, guardian, custodian, foster parent, or
22 any person ten (10) years of age or older who is entrusted with a child's
23 care by a parent, guardian, custodian, 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 responsible for
26 a child's welfare but excluding the spouse of a minor;

27 (4)(A) "Central intake", otherwise referred to as the "child abuse
28 hotline", refers to a unit that shall be established by the Department of
29 Human Services for the purpose of receiving and recording notification made
30 pursuant to this subchapter.

31 (B) Central intake shall be staffed twenty-four (24) hours per
32 day and shall have statewide accessibility through a toll-free telephone
33 number;

34 (5) "Child" or "juvenile" means an individual who+

35 ~~(A) Is~~ is from birth to the age of eighteen (18);

36 ~~(B) Is under the age of twenty one (21) years, whether married~~

1 ~~or single, who was adjudicated delinquent under the Arkansas Juvenile Code of~~
2 ~~1989, § 9-27-301 et seq., for an act committed prior to the age of eighteen~~
3 ~~(18) years, and for whom the court retains jurisdiction; or~~

4 ~~(C) Was adjudicated dependent neglected under the Arkansas~~
5 ~~Juvenile Code of 1989, § 9-27-301 et seq., before reaching the age of~~
6 ~~eighteen (18) years, and who, while engaged in a course of instruction or~~
7 ~~treatments, requests the court to retain jurisdiction until the course has~~
8 ~~been completed;~~

9 (6) "Child maltreatment" means abuse, sexual abuse, neglect, sexual
10 exploitation, or abandonment;

11 (7) "Department" means the Department of Human Services;

12 (8) "Deviate sexual activity" means any act of sexual gratification
13 involving:

14 (A) Penetration, however slight, of the anus or mouth of one
15 person by the penis of another person; or

16 (B) Penetration, however slight, of the labia majora or anus of
17 one person by any body member or foreign instrument manipulated by another
18 person;

19 (9)(A)(i) "Forcible compulsion" means physical force, intimidation, or
20 a threat, express or implied, of physical injury to or death, rape, sexual
21 abuse, or kidnapping of any person.

22 (ii) If the act was committed against the will of the
23 juvenile, then forcible compulsion has been used.

24 (B) The age, developmental ~~state~~ stage, and stature of the
25 victim, and the relationship of the victim to the assailant, as well as the
26 threat of deprivation of affection, rights, and privileges from the victim by
27 the assailant, shall be considered in weighing the sufficiency of the
28 evidence to prove compulsion;

29 (10) "Indecent exposure" means the exposure by a person of the
30 person's sexual organs for the purpose of arousing or gratifying the sexual
31 desire of the person or of any other person under circumstances in which the
32 person knows the conduct is likely to cause affront or alarm;

33 (11) "Near fatality" means an act that, as certified by a physician,
34 places the child in serious or critical condition;

35 (12) "Neglect" means those acts or omissions of a parent, guardian,
36 custodian, foster parent, or any person who is entrusted with the juvenile's

1 care by a parent, custodian, guardian, or foster parent, including, but not
2 limited to, an agent or employee of a public or private residential home,
3 child care facility, public or private school, or any person legally
4 responsible under state law for the juvenile's welfare, but excluding the
5 spouse of a minor and the parents of the married minor, which constitute:

6 (A) Failure or refusal to prevent the abuse of the juvenile when
7 the person knows or has reasonable cause to know the juvenile is or has been
8 abused;

9 (B) Failure or refusal to provide necessary food, clothing,
10 shelter, and education required by law, excluding the failure to follow an
11 individualized educational program, or medical treatment necessary for the
12 juvenile's well-being, except when the failure or refusal is caused primarily
13 by the financial inability of the person legally responsible and no services
14 for relief have been offered or rejected;

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

19 (D) Failure or irremediable inability to provide for the
20 essential and necessary physical, mental, or emotional needs of the juvenile;

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

23 (F) Failure, although able, to assume responsibility for the
24 care and custody of the juvenile or to participate in a plan to assume such
25 responsibility; or

26 (G) Failure to appropriately supervise the juvenile that results
27 in the juvenile's being left alone at an inappropriate age or in
28 inappropriate circumstances that put the juvenile in danger;

29 (13) "Parent" means a biological mother, an adoptive parent, or a man
30 to whom the biological mother was married at the time of conception or birth
31 or who has been found by a court of competent jurisdiction to be the
32 biological father of the juvenile;

33 (14) "Pornography" means:

34 (A) Obscene or licentious material, including pictures, movies,
35 and videos, lacking serious literary, artistic, political, or scientific
36 value, which, when taken as a whole and applying contemporary community

1 standards would appear to the average person to appeal to the prurient
2 interest; or

3 (B) Material that depicts sexual conduct in a patently offensive
4 manner lacking serious literary, artistic, political, or scientific value;

5 (15) "Serious bodily injury" means bodily injury that involves
6 substantial risk of death, extreme physical pain, protracted and obvious
7 disfigurement, or protracted loss or impairment of the function of a bodily
8 member, organ, or mental faculty;

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

15 (17) "Sexual abuse" means:

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

18 (i) Sexual intercourse, deviate sexual activity, or sexual
19 contact by forcible compulsion;

20 (ii) Attempted sexual intercourse, deviate sexual
21 activity, or sexual contact by forcible compulsion;

22 (iii) Indecent exposure; or

23 (iv) ~~Forcing, permitting, or encouraging~~ the watching of
24 pornography or live sexual activity;

25 (B) ~~Between~~ By a person eighteen (18) years of age or older ~~and~~
26 to a person not his or her spouse who is younger than sixteen (16) years of
27 age:

28 (i) Sexual intercourse, deviate sexual activity, or sexual
29 contact or solicitation; or

30 (ii) Attempted sexual intercourse, deviate sexual
31 activity, or sexual contact; ~~or~~

32 (C) ~~Between~~ By a sibling or caretaker to a person younger than
33 eighteen (18) years of age ~~and a sibling or caretaker~~:

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

36 (ii) Attempted sexual intercourse, deviate sexual

1 activity, or sexual contact;

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

4 (i) Forcing, or encouraging the watching of pornography;
5 or

6 (ii) Forcing, permitting, or encouraging the watching of
7 live sexual activity; or

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

10 (i) Sexual intercourse, deviate sexual activity, or sexual
11 contact by forcible compulsion; or

12 (ii) Attempted sexual intercourse, deviate sexual
13 activity, or sexual contact by forcible compulsion;

14 (18)(A) "Sexual contact" means any act of sexual gratification
15 involving the touching, directly or through clothing, of the sex organs,
16 buttocks, or anus of a person or the breast of a female.

17 (B) Provided, that nothing in this section shall permit normal
18 affectionate hugging to be construed as sexual contact;

19 (19) "Sexual exploitation" means allowing, permitting, or encouraging
20 participation or depiction of the juvenile in prostitution, obscene
21 photographing, filming, or obscenely depicting a juvenile for any use or
22 purpose; ~~and~~

23 (20) "Subject of the report" means:

24 (A) The offender;

25 (B) The parents, guardians, and legal custodians of the child
26 who is subject to suspected maltreatment; and

27 (C) The child who is the subject of suspected maltreatment; ~~and~~

28 (21) "Underaged juvenile aggressor" means any child younger than ten
29 (10) years of age for whom a report of sexual abuse has been determined to be
30 true for sexual abuse to another child.

31
32 SECTION 3. Arkansas Code § 12-12-505(a)(1)(B), concerning the central
33 registry within the Department of Human Services is amended to read as
34 follows:

35 (B) Records of all cases where allegations are determined
36 to be unsubstantiated shall ~~be promptly expunged~~ not be included in the

1 central registry.

2

3 SECTION 4. Arkansas Code § 12-12-505, concerning the Central Registry
4 within the Department of Human Services, is amended to add an additional
5 subsection to read as follows:

6 (e)(1) The department may charge a reasonable fee not to exceed ten
7 dollars (\$10.00) for researching, copying, and mailing records of the
8 investigative files of child maltreatment cases.

9 (2) The department may also charge a reasonable fee for
10 reproducing copies of tapes and photographs.

11 (3) No fee may be charged to a nonprofit or volunteer agency
12 that requests searches of the investigative files.

13 (4) No fee may be charged to a person who is indigent.

14

15 SECTION 5. Arkansas Code § 12-12-506(a)(2)(A), concerning disclosure
16 of Department of Human Services central registry data, is amended to read as
17 follows:

18 (2)(A) If the allegations are determined to be true in
19 accordance with § 12-12-512, disclosure is absolutely limited to:

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

23 (ii) Federal, state, or local government entities,
24 or any agent of such entities, having a need for such information in order to
25 carry out its responsibilities under law to protect children from abuse or
26 neglect;

27 (iii) Any person who is the subject of a true
28 report;

29 (iv) A civil or administrative proceeding connected
30 with the administration of the Arkansas Child Welfare State Plan where the
31 court or hearing officer determines that the information is necessary for the
32 determination of an issue before the court or agency;

33 (v) The administration of any federal or federally
34 assisted program which provides assistance, in cash or in kind, or services
35 directly to individuals on the basis of need;

36 (vi) An audit or similar activity conducted in

1 connection with the administration of such plan or program by any
2 governmental agency which is authorized by law to conduct the audit or
3 activity;

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

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

9 (b) Prior written approval is granted by the
10 Director of the Department of Human Services; and

11 (c) The child, through his or her parent,
12 guardian, or guardian ad litem, gives permission to release the information;

13 (viii) A properly constituted authority, including
14 multidisciplinary teams referenced in § 12-12-502(b), investigating a report
15 of known or suspected child abuse or neglect or providing services to a child
16 or family that is the subject of a report;

17 (ix)(a) The Division of Child Care and Early
18 Childhood Education of the Department of Human Services and the child care
19 facility owner or operator who requested the registry information through a
20 signed notarized release from an individual who is a volunteer or who has
21 applied for employment or who is currently employed by a child care facility
22 or who is the owner or operator of a child care facility.

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

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

28 (xi) Child fatality review panels as authorized by
29 the department;

30 (xii) To the general public, the findings or
31 information about the case of child abuse or neglect that has resulted in a
32 child fatality or near fatality, but the central registry may redact any
33 information concerning siblings, attorney-client communications, and other
34 confidential communications;

35 (xiii) A grand jury or court, upon a finding that
36 information in the record is necessary for the determination of an issue

1 before the court or grand jury;

2 (xiv) The current foster parents of a child who is a
3 subject of a report;

4 (xv) Individual federal and state senators and
5 representatives and their staff members who agree not to allow any
6 redisclosure of information, provided that no disclosure shall be made to any
7 committee or legislative body of any information that identifies any
8 recipient of services by name or address;

9 (xvi) A court-appointed special advocate upon
10 presentation of an order of appointment for a child who is a subject of a
11 report; ~~and~~

12 (xvii) The attorney ad litem of a child who is the
13 subject of a report; and

14 (xviii)(a) Employers or volunteer agencies for
15 purposes of screening employees, applicants, or volunteers who are or will be
16 engaged in employment or activity with children, the elderly, the disabled,
17 or the mentally ill upon submission of a signed, notarized release from the
18 employee, applicant, or volunteer.

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

21 (1) That the employee, applicant, or
22 volunteer has a founded report;

23 (2) The date the investigation was
24 completed; and

25 (3) The type of founded report.
26

27 SECTION 6. Arkansas Code § 12-12-506, concerning disclosure of
28 Department of Human Services central registry data, is amended to add an
29 additional subsection to read as follows:

30 (j)(1) Information on pending investigations is confidential and may
31 be disclosed only as provided in this section.

32 (2) Information on pending investigations shall be released upon
33 request to:

34 (A) The department;

35 (B) Law enforcement;

36 (C) The prosecuting attorney's office;

1 (D) Multidisciplinary teams under §12-12-502;

2 (E) Any licensing or registering authority to the extent
3 necessary to carry out its official responsibilities, but the information
4 shall be maintained as confidential; and

5 (F)(i) Individual federal and state senators and
6 representatives and their staff members who agree not to allow any
7 redisclosure of information.

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

10 (3) Information on pending investigations may be released to or
11 disclosed in a circuit court custody or similar case if:

12 (A) No seventy-two (72) hour hold has been exercised under
13 the Child Maltreatment Act, § 12-12-501, et seq., or pleadings filed pursuant
14 to the Arkansas Juvenile Code of 1989, § 9-27-301, et seq.;

15 (B) Written notice of intent to request release or
16 disclose is provided to the investigating agency at least five (5) days
17 before the date for release or disclosure;

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

20 (D) The information gathered thus far by the investigative
21 agency is necessary for the determination of an issue before the court;

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

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

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

29 (4)(A) Information on pending investigations may be released to
30 or disclosed in the juvenile division of the circuit court if the victim or
31 offender has an open dependency-neglect or family in need of services case
32 before the juvenile division of the circuit court in the following
33 circumstances:

34 (i) A petition for dependency-neglect has been filed
35 and the pending investigation is the basis in whole or part for the petition
36 for dependency-neglect;

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

4 (iii) Written notice of intent to request release or
5 disclosure is provided by a party to all other parties in the matter and to
6 the investigating agency at least five (5) days before the date for release
7 or disclosure.

8 (B) The juvenile division of the circuit court shall order
9 release or disclose only after:

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

13 (ii) Determining that the information gathered thus
14 far by the investigative agency is necessary for the determination of an
15 issue before the court;

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

19 (iv) Entering a protective order to prevent
20 redisclosure of the information provided by the investigative agency or
21 limiting the release or disclosure of the information to only the court in
22 camera; and

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

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

28
29 *SECTION 7.* Arkansas Code § 12-12-507(b), concerning reports of
30 suspected child abuse or neglect, is amended to read as follows:

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

36 (1) Any child care worker or foster care worker;

- 1 (2) A coroner;
- 2 (3) A day care center worker;
- 3 (4) A dentist;
- 4 (5) A domestic abuse advocate;
- 5 (6) A domestic violence shelter employee;
- 6 (7) A domestic violence shelter volunteer;
- 7 (8) An employee of ~~the Division of Youth Services~~ of the
- 8 Department of Human Services;
- 9 (9) An employee working under contract for the Division of Youth
- 10 Services of the Department of Human Services;
- 11 (10) ~~A family service worker~~ Any foster parent;
- 12 (11) A judge;
- 13 (12) A law enforcement official;
- 14 (13) A licensed nurse;
- 15 (14) Any medical personnel who may be engaged in the admission,
- 16 examination, care, or treatment of persons;
- 17 (15) A mental health professional;
- 18 (16) An osteopath;
- 19 (17) A peace officer;
- 20 (18) A physician;
- 21 (19) A prosecuting attorney;
- 22 (20) A resident intern;
- 23 (21) A school counselor;
- 24 (22) A school official;
- 25 (23) A social worker;
- 26 (24) A surgeon; or
- 27 (25) A teacher.

28

29 *SECTION 8. Arkansas Code § 12-12-507(d), concerning reports of*
 30 *suspected child abuse or neglect, is amended to read as follows:*

31 *(d) In the event that the child abuse hotline receives notification*
 32 *that a client or a resident of any facility licensed or registered by the*
 33 *State of Arkansas has been subjected to child maltreatment while at such a*
 34 *facility, the ~~child abuse hotline~~ department shall immediately notify that*
 35 *facility's licensing or registering authority of its receipt of initial*
 36 *notification of suspected maltreatment.*

1
2 SECTION 9. Arkansas Code § 12-12-507(f) and (g), concerning reports of
3 suspected child abuse or neglect, are amended to read as follows:

4 (f)(1) The child abuse hotline shall accept a report when the
5 allegations, if true, would constitute child maltreatment as defined in § 12-
6 12-503(6) and as long as sufficient identifying information is provided to
7 identify and locate the child or the family.

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

12 (A) Throwing, kicking, burning, biting, or cutting a
13 child;

14 (B) Striking a child with a closed fist;

15 (C) Shaking a child age four (4) or older; or

16 (D) Striking a child age seven (7) or older on the face or
17 on the head.

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

21 (A) Shaking a child age three (3) or younger;

22 (B) Striking a child age six (6) or younger on the face or
23 on the head; ~~or~~

24 (C) Interfering with a child's breathing; or

25 (D) Pinching or striking a child in the genital area.

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

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

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

35 ~~(A) Throwing, kicking, burning, biting, or cutting a~~
36 ~~child;~~

1 ~~(B) Striking a child with a closed fist;~~

2 ~~(C) Shaking a child;~~

3 ~~(D) Interfering with a child's breathing; or~~

4 ~~(E) Striking a child on the face.~~

5 (g)(1) The child abuse hotline shall accept a report if the child or
6 the child's family is present in Arkansas or the incident occurred in
7 Arkansas.

8 (2) If the child or the child's family resides in another state,
9 the hotline shall screen out the report, transfer the report to the hotline
10 of the state where the child or the child's family resides or the incident
11 occurred, and send a copy to the appropriate investigating agency in Arkansas
12 to initiate courtesy interviews.

13 (3) If the incident occurred in Arkansas and the victim,
14 offender, or parents no longer reside in Arkansas, the hotline shall accept
15 the report and the Arkansas investigating agency shall contact the other
16 state and request a courtesy interview with the out-of-state subject of the
17 report.

18 (4)(A) If the hotline receives a report and the alleged offender
19 is a resident of the State of Arkansas and the report of child maltreatment
20 in the state or country in which the act occurred would also be child
21 maltreatment in Arkansas at the time the incident occurred, the hot line
22 shall refer the report to the appropriate investigating agency within the
23 state so that the Arkansas investigative agency can investigate, alone or in
24 concert with the investigative agency of any other state or country that may
25 be involved.

26 (B) The Arkansas investigating agency shall make an
27 investigative determination and shall provide notice to the alleged offender
28 that if the allegation is determined to be true, the offender's name will be
29 placed in the Arkansas Central Registry.

30 (C) The other state may also conduct an investigation in
31 this state that results in the offender being named in a true report in that
32 state and placed in the Central Registry in that state.

33
34 *SECTION 10.* Arkansas Code § 12-12-509 is amended to read as follows:
35 12-12-509. Investigation - Examinations of children.

36 (a)(1) The Department of Human Services shall cause an investigation

1 to be made upon receiving initial notification of suspected child
2 maltreatment.

3 (2)(A) All investigations shall begin within seventy-two (72)
4 hours.

5 (B) However, if the notice contains an allegation of
6 severe maltreatment then the Department of Human Services shall immediately
7 notify law enforcement, and the department shall initiate an investigation in
8 cooperation with law enforcement agencies and the prosecuting attorney within
9 twenty-four (24) hours.

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

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

14 (ii) Attorney ad litem of any foster child named as
15 the victim or offender; and

16 (iii) Attorney ad litem of all other children in the
17 same foster home if the maltreatment occurred in the foster home.

18 (3)(A) The prosecuting attorney may provide written notice to
19 the Department of Human Services, that the Department of Human Services does
20 not need to provide notification of the initial maltreatment report to the
21 prosecuting attorney's office.

22 (B) Upon receiving the notification, the Department of
23 Human Services shall not be required to provide notification of the initial
24 maltreatment report to the prosecuting attorney's office.

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

27 ~~(1)(A)~~ (A) The existence, cause, nature, and extent of the
28 child maltreatment;

29 ~~(2)(B)~~ (B) The existence and extent of previous injuries;

30 ~~(3)(C)~~ (C) The identity of the person responsible ~~therefor~~ the
31 maltreatment;

32 ~~(4)(D)~~ (D) The names and conditions of other children in the
33 home;

34 ~~(5)(E)~~ (E) The circumstances of the parents or caretakers of
35 the child;

36 ~~(6)(F)~~ (F) The environment where the child resides;

1 ~~(7)~~(G) The relationship of the child or children with the
2 parents or caretakers; and

3 ~~(8)~~(H) All other pertinent data.

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

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

8 (B) The identity of the person responsible for the
9 maltreatment;

10 (C) The existence and extent of previous maltreatment
11 perpetrated by the alleged offender;

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

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

20 (F) All other pertinent and relevant data.

21 (c)(1)(A) The investigation shall include interviews with the parents.

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

24 (C) The investigation shall include an interview with any
25 other relevant persons.

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

29 (B) However, if the age or abilities of the child render
30 an interview impossible, the investigation shall include observation of the
31 child.

32 (3) The investigation may include a physical examination,
33 radiology procedures, photographs, and a psychological or psychiatric
34 examination of all children subject to the care, custody, or control of the
35 ~~same caretaker~~ alleged offender.

36 (4) If, after exercising reasonable diligence in conducting any

1 or all interviews, the subjects of the interviews cannot be located or are
2 unable to communicate, the efforts to conduct such interviews shall be
3 documented and the investigation shall proceed pursuant to this subchapter.

4 (d)(1) An investigative determination shall be made in each
5 investigation within thirty (30) days regardless of whether the investigation
6 is conducted by the Department of Human Services, the Family Protection Unit
7 of the Department of Arkansas State Police, or local law enforcement.

8 (2) However, this procedural requirement shall not be considered
9 as a factor to alter the investigative determination in any judicial or
10 administrative proceeding.

11
12 *SECTION 11.* Arkansas Code § 12-12-510(a) and (b), concerning
13 investigative powers under the Child Maltreatment Act, is amended to read as
14 follows:

15 (a)(1) The person conducting the investigation shall have the right to
16 enter into or upon the home, school, or any other place for the purpose of
17 conducting and interviewing or completing the investigation required by this
18 subchapter.

19 (2) No publicly supported school, facility, or institution may
20 deny access to any person conducting a child maltreatment investigation.

21 (b) If necessary access or admission is denied, the department may
22 petition the proper juvenile division of ~~chancery~~ circuit court for an ex
23 parte order of investigation requiring the parent, caretaker, or persons
24 denying access to any place where the child may be to allow entrance for the
25 interviews, examinations, and investigations.

26
27 *SECTION 12.* Arkansas Code § 12-12-510, concerning investigative powers
28 under the Child Maltreatment Act, is amended to add an additional subsection
29 to read as follows:

30 (g) Upon request by the investigating agency, any school, day care
31 center, child care facility, residential facility, residential treatment
32 facility, or similar institution shall provide the investigator with the
33 name, date of birth, social security number, and last known address and phone
34 number of any person identified as an alleged offender if the alleged
35 maltreatment occurred at that school, center, or facility.

36

1 SECTION 13. Arkansas Code § 12-12-512(a), concerning child
2 maltreatment investigative determinations, is amended to read as follows:

3 (a) Upon completion of the investigation, the Department of Human
4 Services shall determine that the allegations of child maltreatment are:

5 (1)(A) Unsubstantiated.

6 (B) This determination shall be entered when the
7 allegation is not supported by a preponderance of the evidence.

8 (C) There can be no disclosure of unsubstantiated reports
9 except:

10 (i) ~~For release to the prosecutor for the limited~~
11 ~~purpose of prosecution of a person who willfully makes false notification~~
12 ~~pursuant to this subchapter~~ To the prosecutor;

13 (ii) To a subject of the report; ~~and~~

14 (iii) To a court if the information in the record is
15 necessary for a determination of an issue before the court; ~~or~~

16 (iv) To individual federal and state senators and
17 representatives and their staff members, but no disclosure may be made to any
18 committee or legislative body;

19 (v) To law enforcement agencies; and

20 (vi) To any appropriate licensing or registering
21 authority;

22 (D) Any person or agency to whom disclosure is made shall
23 not disclose to any other person reports or other information obtained
24 pursuant to this section; or

25 (2)(A) True.

26 (B) This determination shall be entered when the
27 allegation is supported by a preponderance of the evidence.

28 (C) A determination of true shall not be entered ~~when~~ if:

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

34 (ii) The offender is an underaged juvenile
35 aggressor.

36 (D)(i) Notwithstanding subdivision (a)(2)(A) of this

1 section, the department shall have the authority to pursue:

2 (a) Any legal remedies, including the
3 authority to initiate legal proceedings in a court of competent jurisdiction;
4 and

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

9 (ii) Except with respect to the withholding of
10 medically indicated treatments from disabled infants with life-threatening
11 conditions, case-by-case determinations concerning the exercise of authority
12 in this subsection shall be within the sole discretion of the department.
13

14 *SECTION 14.* Arkansas Code § 12-12-512(c), concerning child
15 maltreatment investigative determinations, is amended to read as follows:

16 (c)(1)(A)(i) In every case where a report is determined to be true,
17 the department shall notify each subject of the report of the determination.

18 (ii) If the offender is a juvenile aged ten (10) or
19 older and is in foster care, the department shall notify the juvenile's
20 public defender or counsel for the juvenile, and the legal parents or legal
21 guardians of the offender.

22 (iii) If the offender is a juvenile aged (10) or
23 older, the department shall notify the legal parents or legal guardians of
24 the offender.

25 (B) Notification shall be in writing by certified mail,
26 restricted delivery, or by a process server.

27 (C) Notification shall include the following:

28 (i) The investigative determination, true or
29 unsubstantiated, exclusive of the source of the notification;

30 (ii) A statement that the person named as the
31 offender of the true report may request an administrative hearing;

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

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

1 (2) The administrative hearing process must be completed within
2 ~~ninety (90)~~ one hundred eighty (180) days from the date of the receipt of the
3 request for a hearing, provided that:

4 (A) Delays in completing the hearing that are attributable
5 to the petitioner shall not count against the ~~ninety-day~~ one hundred eighty-
6 day limit;

7 (B) Failure to complete the hearing process in a timely
8 fashion shall not deprive the department or a court reviewing the child
9 maltreatment determination of jurisdiction to make a final agency
10 determination or review a final agency determination pursuant to the Arkansas
11 Administrative Procedure Act, § 25-15-201 et seq.; and

12 (C)(i) The ~~ninety-day~~ one hundred eighty-day limit shall
13 not apply if there is an ongoing criminal investigation or criminal charges
14 have or will be filed regarding the occurrence that is the subject of the
15 child maltreatment report.

16 (ii) In those cases the administrative hearing shall
17 be stayed pending final disposition of the criminal proceedings.

18 (iii) It shall be the duty of the petitioner to
19 report the final disposition of the criminal proceeding to the department.

20 (iv) Each report shall include a file-marked copy of
21 the criminal disposition.

22 (v) The request for administrative hearing shall be
23 deemed waived if the petitioner fails to report the disposition of the
24 criminal proceedings within thirty (30) days of the entry of a dispositive
25 judgment or order.

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

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

34 ~~(4)~~(3) When the department conducts such administrative appeal
35 hearings, the chief counsel of the department is authorized to require the
36 attendance of witnesses and the production of books, records, or other

1 documents through the issuance of subpoenas when such testimony or
2 information is necessary to adequately present the position of the
3 department, the investigating protective services agency, or the alleged
4 offender or adult subject of a report.

5 (4) If the petitioner prevails at the administrative hearing or
6 circuit court hearing and the report is changed from true to unsubstantiated,
7 upon request by the petitioner, the department shall tender a list of persons
8 to whom a disclosure had previously been made that the report was true.

9
10 SECTION 15. Arkansas Code § 12-12-514(c), concerning child
11 maltreatment investigative reports, is amended to read as follows:

12 (c)(1)(A) A copy of the written report and any supporting
13 documentation, including statements from witnesses and transcripts of
14 interviews, shall immediately be filed at no cost with the central registry.

15 (B) All information gathered during the course of the
16 investigation shall be contained in the department's file whether or not the
17 information supports the investigative determination.

18 (2)(A) Notification of the investigative determination shall be
19 provided to the appropriate law enforcement agency and prosecuting attorney's
20 office regarding reports of severe maltreatment.

21 (B) Notification of the investigative determination shall
22 be provided to any appropriate licensing or registering authorities.

23 (3) If the investigative determination is true and the victim or
24 offender is in foster care, notification of the investigative determination
25 shall be provided to the juvenile division of circuit court judge, the
26 juvenile division court appointed attorneys ad litem of the victim and
27 offender, Court Appointed Special Advocates if appointed in an open
28 dependency-neglect case, and the legal parents of the victim or offender who
29 is in foster care.

30
31 SECTION 16. Arkansas Code § 12-12-515 is amended to read as follows:
32 12-12-515. Provision of information to person or agency making initial
33 notification of suspected maltreatment.

34 (a)(1) If the person or agency making the initial notification of
35 suspected child maltreatment is required to do so by this subchapter, the
36 Department of Human Services, within ten (10) business days of the child

1 maltreatment investigative determination, shall provide to the person the
2 following information:

3 (A) The investigative determination; and

4 (B) Services offered and provided.

5 (2)(A) The department shall provide the local educational
6 agency, specifically the school counselor where the maltreated child attends
7 school, a report including the name and relationship of the offender to the
8 maltreated child and indicating the department's founded investigative
9 determination regarding the child and the services offered or provided by the
10 department to the child.

11 (B) The department shall also provide the local
12 educational agency, specifically the school counselor, a report indicating
13 the department's founded investigative determination on any juvenile age 10
14 or older who is named as the offender in a true report and the services
15 offered or provided by the department to the juvenile offender.

16 (3) Any local educational agency receiving such information from
17 the department shall make this information, if it is a true report, as
18 confidential and a part of the child's permanent educational record and shall
19 treat such information as educational records are treated under the Family
20 Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

21 (b)(1) The department may provide information to a person or agency
22 that provides services such as medical examination of, an assessment
23 interview with, or diagnosing, caring for, treating, or supervising a victim
24 of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

25 (2) This information may include:

26 (A) The investigative determination or the investigation
27 report; and

28 (B) The services offered and provided.

29
30 *SECTION 17.* Arkansas Code § 12-12-516(a), concerning protective
31 custody of children under the Child Maltreatment Act, is amended to read as
32 follows:

33 (a)(1) A police officer, a law enforcement official, a juvenile
34 division of circuit court judge during juvenile proceedings concerning the
35 child or siblings of the child, or a designated employee of the Department of
36 Human Services may take a child into protective custody or any person in

1 charge of a hospital or similar institution or any physician treating a child
 2 may keep that child in his or her custody without the consent of the parent
 3 or the guardian, whether or not additional medical treatment is required, if
 4 the child is ~~dependent-neglected, as defined in § 9-27-303(15)~~ dependent as
 5 defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et. seq., or if the
 6 circumstances or conditions of the child are such that continuing in his or
 7 her place of residence or in the care and custody of the parent, guardian,
 8 custodian, or caretaker presents an immediate danger of severe maltreatment.

9
10 /s/ Dees

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13 APPROVED: 3/27/2003
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