

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

SENATE BILL 702

5 By: Senator Luker  
6

## For An Act To Be Entitled

8 AN ACT TO ASSURE DUE PROCESS AND PROVIDE  
9 ADMINISTRATIVE SIMPLIFICATION IN DEPARTMENT OF HUMAN  
10 SERVICES ADJUDICATIONS; AND FOR OTHER PURPOSES.  
11

## Subtitle

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13  
14 TO ASSURE DUE PROCESS AND PROVIDE  
15 ADMINISTRATIVE SIMPLIFICATION IN  
16 DEPARTMENT OF HUMAN SERVICES  
17 ADJUDICATIONS.  
18  
19

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

22 SECTION 1. Arkansas Code § 12-12-1715(d) is repealed:

23 ~~(d)(1) When the department conducts an administrative hearing, the~~  
24 ~~chief counsel of the department may require the attendance of witnesses and~~  
25 ~~the production of books, records, or other documents through the issuance of~~  
26 ~~a subpoena if the testimony or information is necessary to adequately present~~  
27 ~~the position of the department or the alleged offender in a report.~~

28 ~~(2) Failure to obey the subpoena may be deemed a contempt and is~~  
29 ~~punishable accordingly.~~  
30

31 SECTION 2. Arkansas Code § 12-18-802 is amended to read as follows:

32 12-18-802. Subpoenas - ~~Form~~ Service upon a child.

33 ~~(a) When the Department of Human Services conducts an administrative~~  
34 ~~hearing, the chief counsel of the department may require the attendance of~~  
35 ~~witnesses and the production of books, records, or other documents through~~  
36 ~~the issuance of subpoenas when that testimony or information is necessary to~~



1 adequately present the position of the department, the investigating agency,  
2 or the alleged offender.

3 (b) Failure to obey the subpoena may be deemed contempt, punishable  
4 accordingly.

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

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

11 "The State of Arkansas to the Sheriff of \_\_\_\_\_ County:  
12 You are commanded to subpoena (name) \_\_\_\_\_, (address) \_\_\_\_\_,  
13 to attend a proceeding before the Department of Human Services to be held at  
14 \_\_\_\_\_ on the day of \_\_\_\_\_, 20 \_\_\_\_\_,  
15 at \_\_\_\_\_ m., and testify and/or produce the following books, records, or  
16 other documents, to wit: in a matter of (style of proceeding) \_\_\_\_\_  
17 to be conducted under the authority of \_\_\_\_\_. WITNESS  
18 my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
19 \_\_\_\_\_ Chief Counsel or designee, Department of Human Services".

21 (e)(1) Subpoenas issued under this section shall be served in the  
22 manner as now provided by law, returned, and a copy made and kept by the  
23 department.

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

26 (f) Witnesses duly served with subpoenas issued pursuant to the  
27 authority provided in this section who refuse to testify or give evidence may  
28 be cited on affidavit through application of the chief counsel of the  
29 department to the Pulaski County Circuit Court or any circuit court of the  
30 state where the subpoenas were served.

31 (g) If any child served with a subpoena to be a witness in an  
32 administrative hearing is a party to an open dependency-neglect or family in  
33 need of services case, the child's attorney ad litem shall be provided a copy  
34 of the subpoena.

35  
36 SECTION 3. Arkansas Code § 20-10-208(g) is repealed.



1 manner as now provided by law and returned and a record made and kept by the  
 2 department. The fees and mileage of officers serving the subpoenas and  
 3 witnesses in answer to subpoenas shall be the same as now provided by law.

4 (d) Applicants and recipients of public assistance benefits who  
 5 request fair hearings on determinations made by the department and other  
 6 parties to administrative adjudications of the department may request  
 7 issuance of subpoenas by the chief counsel. These requests for subpoenas  
 8 shall be granted by the chief counsel if the testimony or documents desired  
 9 are considered necessary and material without being unduly repetitious of  
 10 other available evidence.

11 (e) Persons duly served with subpoenas issued pursuant to the  
 12 authority provided in this section who shall refuse to testify or produce  
 13 books, records, or documents may be cited on affidavit through application of  
 14 the chief counsel to the Circuit Court of Pulaski County or any circuit court  
 15 of the state where the subpoena was served. Failure to obey the subpoena may  
 16 be deemed a contempt, with punishment accordingly.

17  
 18 SECTION 5. Arkansas Code Title 25, Chapter 10, Subchapter 1 is amended  
 19 to add a new section to read as follows:

20 25-10-141. Subpoenas in administrative adjudications.

21 (a)(1)(A) In every case of adjudication before the Arkansas Department  
 22 of Human Services, an administrative law judge shall have the power to issue  
 23 subpoenas for the attendance of witnesses, the production of documents, or  
 24 both, upon request of any party to the adjudication.

25 (B) Requests for a subpoena shall be granted by the  
 26 administrative law judge if the testimony or documents desired are considered  
 27 necessary and material without being unduly repetitious of other available  
 28 evidence.

29 (2) Each subpoena shall:

30 (A) State that the subpoena is issued in a proceeding  
 31 pending before the Department of Human Services;

32 (B) Contain the title of the administrative adjudication;  
 33 and

34 (C) Command each person to whom it is directed to appear  
 35 and give testimony at the time and place therein specified.

36 (3) Subpoenas may require the production of documents including:

- 1                   (A) Writings;
- 2                   (B) Drawings;
- 3                   (C) Graphs;
- 4                   (D) Charts;
- 5                   (E) Photographs;
- 6                   (F) Recordings; and
- 7                   (G) Other data compilations from which information can be
- 8 obtained.

9                   (4) The party who requested a subpoena shall be responsible for  
 10 servicing the subpoena in the manner provided by law.

11                   (5) Return of service shall be recorded and the record shall be  
 12 retained in the adjudication case file.

13                   (6)(A) The circuit court of Pulaski County or the circuit court  
 14 of the county of residence of any person duly served with a subpoena issued  
 15 under this section may enforce the subpoena.

16                   (B) Enforcement shall be in the manner provided by law for  
 17 the enforcement of subpoenas issued by a circuit court.

18                   (b) Upon motion and a showing of good cause, the presiding official  
 19 may issue orders quashing or limiting subpoenas based on a determination  
 20 that:

21                   (1) The person subpoenaed does not have relevant, admissible  
 22 evidence;

23                   (2) The information or records sought are irrelevant to the  
 24 adjudication;

25                   (3) The information or records sought are confidential and not  
 26 subject to disclosure or to production under federal laws or regulations or  
 27 state law;

28                   (4) Compliance with the subpoena would result in undue burden or  
 29 expense; or

30                   (5) The evidence possessed by the person subpoenaed or the  
 31 information or record sought is unduly repetitious of other available  
 32 evidence.

33                   (c) If any child served with a subpoena to be a witness in an  
 34 administrative hearing is a party to an open dependency-neglect or family in  
 35 need of services case, the child's attorney ad litem shall be provided a copy  
 36 of the subpoena.

**APPROVED: 04/04/2011**