

As Engrossed: 3/21/95 4/3/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 1341 OF 1995
HOUSE BILL 2076

4 **By: Representatives Pollan and Wilkins**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED 12-12-501, ET
9 SEQ., TO CLARIFY THE DUTIES AND RESPONSIBILITIES OF THE
10 DEPARTMENT OF HUMAN SERVICES IN REGARD TO CHILD ABUSE
11 REPORTING; AND FOR OTHER PURPOSES."

12

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Subtitle

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"TO CLARIFY THE DUTIES OF DHS IN REGARD
15 TO CHILD ABUSE REPORTING"

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

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SECTION 1. Arkansas Code 12-12-503(1) is amended to read as follows:

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"(1) Child or juvenile means an individual who:

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(A) Is under the age of eighteen (18) years;

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(B) Is under the age of twenty-one (21) years, whether married or

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single, who was adjudicated delinquent under the Arkansas Juvenile Code for an
24 act committed prior to the age of eighteen (18) years and for whom the court
25 retains jurisdiction; or

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(C) Was adjudicated dependent-neglected under the Arkansas

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Juvenile Code before reaching the age of eighteen (18) years and who, while

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engaged in a course of instruction or treatments, requests the court to retain
29 jurisdiction until the course has been completed;"

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SECTION 2. Arkansas Code 12-12-503(9) is amended to read as follows:

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"(9) Caretaker means a parent, guardian, custodian, foster parent, or

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any person ten (10) years of age or older who is entrusted with a child's care

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by a parent, guardian, custodian, or foster parent, including, but not limited

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to, an agent or employee of a public or private residential home, child care

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facility, public or private school, or any person responsible for a child's

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1 welfare;"

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

4 "(12) Subject of the report means the offender , the parents and
5 caretakers of the child who is subject to suspected maltreatment, and the
6 child who is the subject of suspected maltreatment; and"

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8 SECTION 4. Arkansas Code 12-12-504 is amended by adding the following
9 subsection:

10 "(d) Judges or prosecuting attorneys who fail to make notification when
11 required by this subchapter shall not be subject to any of the penalties
12 outlined in this subchapter."

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14 SECTION 5. Arkansas Code 12-12-505 is amended to read as follows:

15 "12-12-505. Central registry.

16 (a) There is established within the Department of Human Services a
17 statewide central registry for the collection of records of cases involving
18 allegations of child maltreatment which are determined to be true pursuant to
19 this subchapter.

20 (b) Records of all cases where allegations are determined to be true
21 shall be retained by the central registry.

22 (c) The Central Registry may adopt such rules and regulations as may be
23 necessary to encourage cooperation with other states in exchanging true
24 reports, and to effect a national registration system."

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26 SECTION 6. Arkansas Code 12-12-506 is amended to read as follows:

27 "12-12-506. Disclosure of central registry data.

28 (a) Reports made pursuant to this subchapter, shall be confidential and
29 may be used or disclosed only as provided in this section. If the allegations
30 are determined to be true in accordance with § 12-12-512, disclosure is
31 absolutely limited to:

32 (1) The administration of the adoption, foster care, children's
33 protective services programs, or child care licensing programs of any state.
34 Reports of investigative determinations which are true shall be disclosed to
35 the Child Care Facility Review Board by oral report only for purposes of

1 enforcement of licensing law and regulations;

2 (2) Any law enforcement investigation or criminal prosecution
3 conducted in connection with the provisions of this subchapter;

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

5 (4) A civil or administrative proceeding connected with the
6 administration of the Arkansas Child Welfare State Plan where the court or
7 hearing officer determines the information is necessary for the determination
8 of an issue before the court or agency;

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

12 (6) An audit or similar activity conducted in connection with the
13 administration of such plan or program by any governmental agency which is
14 authorized by law to conduct the audit or activity;

15 (7) A person, agency or organization engaged in a bona fide
16 research or evaluation project, but without information identifying
17 individuals named in a report or record, provided that:

18 (A) having that information open for review is essential to
19 the research or evaluation;

20 (B) prior written approval is granted by the Director of
21 the Department of Human Services; and

22 (C) the child, through his parent, guardian, or guardian ad
23 litem gives permission to release the information;

24 (8) A properly constituted authority, including multidisciplinary
25 teams referenced in 12-12-502(b), investigating a report of known or suspected
26 child abuse or neglect or providing services to a child or family which is the
27 subject of a report;

28 (9) The Child Care Facility Review Board and the child care
29 facility owner or operator who requested the registry information through a
30 signed notarized release from an individual who is a volunteer or who has
31 applied for employment or who is currently employed by a child care facility
32 or who are the owner or operator of a child care facility. This disclosure
33 shall be for the limited purpose of providing central registry background
34 information and shall indicate a true finding only.

35 (b) Any licensing or registering authority in receipt of initial

1 notification of suspected child maltreatment may access the central registry
2 to the extent necessary to carry out its official responsibilities, but the
3 information must be maintained as confidential.

4 (c) (1) Any person or agency to whom disclosure is made shall not
5 disclose to any other person reports or other information obtained pursuant to
6 this subdivision.

7 (2) (A) Provided, however, that a local educational agency or a
8 school counselor shall forward all true reports of child maltreatment received
9 from the department whenever a child transfers from one local educational
10 agency to another, and shall notify the department of the child's new school,
11 and address, if known.

12 (B) Any person disclosing information in violation of this
13 subsection shall be guilty of a Class C misdemeanor.

14 (d) Disclosure is prohibited to any committee or legislative body,
15 other than an agency referred to in §§ 12-12-507(e), 12-12-509 - 12-12-511
16 with respect to an activity referred to in such subdivision, of any
17 information which identifies by name or address, any applicant or recipient.

18 (e) The department shall not release data that would identify the
19 person who made the report or who cooperated in a subsequent investigation
20 unless a court of competent jurisdiction orders release of the information for
21 good cause shown. However, the information shall be disclosed to the
22 prosecuting attorney or law enforcement officers on request.

23 (f) Within ten (10) days following an investigative determination, the
24 department shall provide the person or agency making notification of suspected
25 child maltreatment information as to whether an investigation has been
26 conducted and whether services have been offered."

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28 SECTION 7. Arkansas Code 12-12-507(b) is amended to read as follows:

29 "(b) When any physician, surgeon, coroner, dentist, osteopath, resident
30 intern, licensed nurse, medical personnel who may be engaged in admission,
31 examination, care, or treatment of persons, teacher, school official, school
32 counselor, social worker, family service worker, day care center worker, or
33 any other child or foster care worker, mental health professional, peace
34 officer, law enforcement official, prosecuting attorney or judge has
35 reasonable cause to suspect that a child has been subjected to child

1 maltreatment, or that a child has died as a result of child maltreatment, or
2 who observes the child being subjected to conditions or circumstances which
3 would reasonably result in child maltreatment, he shall immediately notify
4 central intake or law enforcement."
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6 SECTION 8. Arkansas Code 12-12-507(f) is repealed.
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8 SECTION 9. Arkansas Code 12-12-509(c) is amended to read as follows:

9 "(c) (1) The investigation shall include interviews with the parents,
10 caretakers, as may be relevant to the alleged maltreatment, and the alleged
11 offender.

12 (2) The investigation shall include an interview with the child.
13 However, if the age or abilities of the child render an interview impossible,
14 the investigation shall include observation of the child.

15 (3) The investigation may include a physical examination and a
16 psychological or psychiatric examination of all children subject to the care,
17 custody, or control of the same caretaker.

18 (4) If, after exercising reasonable diligence in conducting any
19 or all interviews, the subjects of the interviews cannot be located or are
20 unable to communicate, the efforts to conduct such interviews shall be
21 documented and the investigation shall proceed pursuant to this subchapter."
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23 SECTION 10. Arkansas Code 12-12-511 is amended to read as follows:

24 "12-12-511. Investigation to be closed.

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

29 (b) Any provision to the Arkansas Uniform Rules of Evidence
30 notwithstanding, any privilege between a minister and any person confessing to
31 or being counseled by the minister shall not constitute grounds for excluding
32 evidence at any dependent/neglect proceeding or proceedings involving custody
33 of a minor.

34 (1) (A) If at any time before or during the investigation it
35 appears that the offender is identified and is not a caretaker of the victim

1 child , the department shall refer the matter to the appropriate law
2 enforcement agency, close its investigation, and forward a copy of its
3 findings to the appropriate law enforcement agency for that agency's further
4 use in any criminal investigation.

5 (B) If the alleged offender is a juvenile, but not a
6 caretaker, law enforcement may refer the matter to the department for
7 investigation.

8 (2)(A) If the appropriate law enforcement agency subsequently
9 determines that the offender is a caretaker, it shall immediately notify the
10 department of its determination.

11 (B) Thereupon the department shall reopen and continue its
12 investigation in compliance with all other requirements contained in this
13 subchapter."

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15 SECTION 11. Arkansas Code 12-12-512 is amended to read as follows:

16 "12-12-512. Investigative determination - Notice of finding - Amendment
17 and appeal.

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

20 (1) Unsubstantiated: This determination shall be entered when
21 the allegation is not supported by some credible evidence. There can be no
22 disclosure of unsubstantiated reports except for release to the prosecutor for
23 the limited purpose of prosecution of a person who willfully makes false
24 notification pursuant to this subchapter;

25 (2) True: This determination shall be entered when the
26 allegation is supported by some credible evidence;

27 (A) A determination of true shall not be entered when a
28 parent, practicing his religious beliefs, does not, for that reason alone,
29 provide medical treatment for a child, but in lieu of such treatment the child
30 is being furnished with treatment by spiritual means alone, through prayer, in
31 accordance with a recognized religious method of healing by an accredited
32 practitioner.

33 (B) Such prohibition shall not limit the administrative or
34 judicial authority of the state to ensure that medical services are provided
35 to the child when his health requires it.

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

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

5 (A) Notification shall be in writing by hand delivery or by
6 certified mail, restricted delivery.

7 (B) Such notification shall include the following:

8 (i) The investigative determination, true or
9 unsubstantiated, exclusive of the source of the notification, name of the
10 person making notification, occupation, and where they can be reached;

11 (ii) A statement that an adult subject of the true
12 report may request an administrative hearing; and

13 (iii) A statement that such request must be made
14 within thirty (30) days of receipt of the hand delivery or mailing of the
15 notice of determination.

16 (2) The administrative hearing process must be completed within
17 ninety (90) days from the date of the receipt of the request for a hearing.

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

20 (4) When the department conducts such administrative appeal
21 hearings, the chief counsel of the department is authorized to require the
22 attendance of witnesses and the production of books, records, or other
23 documents through the issuance of subpoenas when such testimony or information
24 is necessary to adequately present the position of the Department of Human
25 Services, the investigating protective services agency, or the alleged
26 offender or adult subject of a report."

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28 SECTION 12. Arkansas Code 12-12-514(d) is amended to read as follows:

29 "(d) Notwithstanding any provision of this subchapter, the department
30 shall forward the investigative determination, exclusive of the source of the
31 notification, name of the person making notification, occupation, and where
32 they can be reached, to the parents and alleged offender by hand delivery or
33 by certified mail, restricted delivery, addressed to the recipient's last
34 known address."

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1 SECTION 13. Arkansas Code 12-12-515(b) is amended to read as follows:

2 "(b) (1) The department may provide information to a person or agency
3 that provides professional services such as medical examination of , an
4 assessment interview with, or diagnosing, caring for, treating or supervising
5 a victim of maltreatment.

6 (2) This information may include:

7 (A) The investigative determination or the investigation
8 report; and

9 (B) The services offered and provided."
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11 SECTION 14. All provisions of this act of a general and permanent
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
13 Code Revision Commission shall incorporate the same in the Code.
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15 SECTION 15. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.
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21 SECTION 16. All laws and parts of laws in conflict with this act are
22 hereby repealed.
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24 /s/Rep. Pollan, et al

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26 APPROVED: 4-17-95
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