

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.
Act 758 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 786

5 By: Senator Madison
6 By: Representative Harrelson
7
8

For An Act To Be Entitled

9
10 AN ACT TO UPDATE THE REFERENCES IN THE ARKANSAS
11 CODE RELATED TO THE CHILD MALTREATMENT ACT; AND
12 FOR OTHER PURPOSES.
13

Subtitle

14
15 TO UPDATE THE REFERENCES IN THE ARKANSAS
16 CODE RELATED TO THE CHILD MALTREATMENT
17 ACT.
18
19

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

22 SECTION 1. Arkansas Code § 5-14-110(a)(3)-(4), regarding the crime of
23 sexual indecency with a child, is amended to read as follows:

24 (3) With the purpose to arouse or gratify a sexual desire of
25 himself or herself or a sexual desire of any other person, the person
26 purposely exposes his or her sex organs to another person who is less than
27 eighteen (18) years of age, and the actor is:

28 (A) Employed with the Department of Correction, Department
29 of Community Correction, any city or county jail, or any juvenile detention
30 facility, and the minor is in custody at a facility operated by the agency or
31 contractor employing the actor;

32 (B) A ~~professional~~ mandated reporter under ~~§ 12-12-507(b)~~
33 § 12-18-402(b) and is in a position of trust or authority over the minor; or

34 (C) The minor's guardian, an employee in the minor's
35 school or school district, a temporary caretaker, or a person in a position



1 of trust and authority over the minor;

2 (4) With the purpose to arouse or gratify his or her sexual
3 desire or a sexual desire of another person, a person who is eighteen (18)
4 years of age or older:

5 (A) Causes or coerces another person who is less than
6 eighteen (18) years of age to expose his or her sex organs to another person;
7 and

8 (B)(i) Is employed with the Department of Correction,
9 Department of Community Correction, any city or county jail, or any juvenile
10 detention facility, and the minor is in custody at a facility operated by the
11 agency or contractor employing the actor;

12 (ii) Is a ~~professional~~ mandated reporter under ~~§ 12-~~
13 ~~12-507(b)~~ § 12-18-402(b) and is in a position of trust or authority over the
14 minor; or

15 (iii) Is the minor's guardian, an employee in the
16 minor's school or school district, a temporary caretaker, or a person in a
17 position of trust or authority over the minor; or

18

19 SECTION 2. Arkansas Code § 5-14-124(a), regarding the crime of sexual
20 assault in the first degree, is amended to read as follows:

21 (a) A person commits sexual assault in the first degree if the person
22 engages in sexual intercourse or deviate sexual activity with another person
23 who is less than eighteen (18) years of age and is not the actor's spouse and
24 the actor is:

25 (1) Employed with the Department of Correction, the Department
26 of Community Correction, the Department of ~~Health and~~ Human Services, or any
27 city or county jail or a juvenile detention facility, and the victim is in
28 the custody of the Department of Correction, the Department of Community
29 Correction, the Department of ~~Health and~~ Human Services, any city or county
30 jail or juvenile detention facility, or their contractors or agents;

31 (2) A ~~professional~~ mandated reporter under ~~§ 12-12-507(b)~~ § 12-
32 18-402(b) and is in a position of trust or authority over the victim and uses
33 the position of trust or authority to engage in sexual intercourse or deviate
34 sexual activity; or

35 (3) An employee in the victim's school or school district, a
36 temporary caretaker, or a person in a position of trust or authority over the

1 victim.

2

3 SECTION 3. Arkansas Code § 5-14-125(a)(4)(A), regarding the crime of
4 sexual assault in the second degree, is amended to read as follows:

5 (4)(A) Engages in sexual contact with another person who is less
6 than eighteen (18) years of age and the actor is:

7 (i) Employed with the Department of Correction,
8 Department of Community Correction, any city or county jail, or any juvenile
9 detention facility, and the minor is in custody at a facility operated by the
10 agency or contractor employing the actor;

11 (ii) A ~~professional mandated reporter~~ under ~~§ 12-12-~~
12 ~~507(b)~~ § 12-18-402(b) and is in a position of trust or authority over the
13 minor; or

14 (iii) The minor's guardian, an employee in the
15 minor's school or school district, a temporary caretaker, or a person in a
16 position of trust or authority over the minor.

17

18 SECTION 4. Arkansas Code § 5-14-126(a)(1), regarding sexual assault in
19 the third degree, is amended to read as follows:

20 (a) A person commits sexual assault in the third degree if the person:

21 (1) Engages in sexual intercourse or deviate sexual activity
22 with another person who is not the actor's spouse, and the actor is:

23 (A) Employed with the Department of Correction, Department
24 of Community Correction, Department of Human Services, or any city or county
25 jail, and the victim is in the custody of the Department of Correction,
26 Department of Community Correction, Department of Human Services, or any city
27 or county jail;

28 (B) Employed or contracted with or otherwise providing
29 services, supplies, or supervision to an agency maintaining custody of
30 inmates, detainees, or juveniles, and the victim is in the custody of the
31 Department of Correction, Department of Community Correction, Department of
32 Human Services, or any city or county jail; or

33 (C) A ~~professional mandated reporter~~ under ~~§ 12-12-507(b)~~
34 § 12-18-402(b) or a member of the clergy and is in a position of trust or
35 authority over the victim and uses the position of trust or authority to
36 engage in sexual intercourse or deviate sexual activity; or

1
2 SECTION 5. Arkansas Code § 5-16-101(d), regarding the crime of video
3 voyeurism, is amended to read as follows:

4 (d) The provisions of this section do not apply to any of the
5 following:

6 (1) Video recording or monitoring conducted ~~pursuant to~~ under a
7 court order from a court of competent jurisdiction;

8 (2) Security monitoring operated by or at the direction of an
9 occupant of a residence;

10 (3) Security monitoring operated by or at the direction of the
11 owner or administrator of a place of business, school, or other structure;

12 (4) Security monitoring operated in a motor vehicle used for
13 public transit;

14 (5) Security monitoring and observation associated with a
15 correctional facility, regardless of the location of the monitoring
16 equipment;

17 (6) Video recording or monitoring conducted by a law enforcement
18 officer within the official scope of his or her duty; or

19 (7) Videotaping ~~pursuant to § 12-12-508(b)~~ under § 12-18-615(b).

20
21 SECTION 6. Arkansas Code § 6-18-513(c), regarding when a school or
22 school district is required to notify a parent, is amended to read as
23 follows:

24 (c) Notification required by subsection (b) of this section is not
25 required if school personnel make a report or file a complaint based on
26 suspected child maltreatment as required under ~~§ 12-12-507~~ subchapter 4 of
27 the Child Maltreatment Act, § 12-18-101 et seq., or if a law enforcement
28 officer, investigator of the Crimes Against Children Division of the
29 Department of Arkansas State Police, or Department of Human Services
30 investigator or personnel member interviews a student during the course of an
31 investigation of suspected child maltreatment.

32
33 SECTION 7. Arkansas Code § 6-61-133, regarding when a school or school
34 district is required to notify a parent, is amended to read as follows:

35 6-61-133. Training for mandatory reporters.

36 For each degree program at an institution of higher learning in this

1 state that is a prerequisite for licensure or certification in a profession
 2 in which the professional is a child maltreatment mandated reporter under the
 3 ~~Arkansas Child Maltreatment Act, § 12-12-501 et seq.~~ Child Maltreatment Act,
 4 § 12-18-101 et seq., the Department of Higher Education shall coordinate with
 5 all the higher education institutions to ensure that before receiving a
 6 degree each graduate receives, including without limitation, training in:

7 (1) Recognizing the signs and symptoms of child abuse and
 8 neglect;

9 (2) The legal requirements of the ~~Arkansas Child Maltreatment~~
 10 ~~Act, § 12-12-501 et seq.~~ Child Maltreatment Act, § 12-18-101 et seq., and the
 11 duties of mandated reporters under the act; and

12 (3) Methods for managing disclosures regarding child victims.
 13

14 SECTION 8. Arkansas Code § 9-9-702(a) and (b), regarding the fast-
 15 tracked adoptions of Garrett’s Law babies, is amended to read as follows:

16 (a) If a report of neglect under ~~§ 12-12-503(12)(B)~~ § 12-18-103(13)(B)
 17 is made to the Arkansas State Police Child Abuse Hotline, the mother has the
 18 option to place the newborn for:

19 (1) Adoption through a licensed child placement agency as
 20 defined in § 9-28-402(7); or

21 (2) A private adoption with any person licensed to practice
 22 medicine or law.

23 (b) If a newborn is taken into the custody of the Department of Human
 24 Services as the result of a call to the hotline of neglect under ~~§ 12-12-~~
 25 ~~503(12)(B)~~, § 12-18-103(13)(B), the mother has the option to place the
 26 newborn for:

27 (1) Adoption through a licensed child placement agency under §
 28 9-28-402(7); or

29 (2) A private adoption with any person licensed to practice
 30 medicine or law.
 31

32 SECTION 9. Arkansas Code § 9-27-306(a)(1)(C), regarding the
 33 jurisdiction of circuit courts for matters under the Arkansas Juvenile Code,
 34 is amended to read as follows:

35 (C) Proceedings in which emergency custody or a seventy-two-hour
 36 hold has been taken on a juvenile pursuant to under § 9-27-313 or ~~§ 12-12-516~~

1 the Child Maltreatment Act, § 12-18-101 et seq.;
 2

3 SECTION 10. Arkansas Code § 9-27-306(a)(3)(A), regarding the
 4 jurisdiction of circuit courts for matters under the Arkansas Juvenile Code,
 5 is amended to read as follows:

6 (3)(A) When the department exercises custody of a juvenile ~~pursuant to~~
 7 ~~§ 12-12-516~~ under the Child Maltreatment Act, § 12-18-101 et seq., and a
 8 dependency-neglect petition is filed by the department concerning that
 9 juvenile, any party to that petition may file a motion to transfer any other
 10 legal proceeding concerning the juvenile to the court hearing the dependency-
 11 neglect petition.
 12

13 SECTION 11. Arkansas Code § 9-27-308(a)(1)(3), regarding the personnel
 14 duties of intake officers under the Arkansas Juvenile Code, is amended to
 15 read as follows:

16 (3) If the intake officer has reasonable cause to suspect that a
 17 juvenile has been subjected to child maltreatment as defined ~~at § 12-12-~~
 18 ~~503(6)~~ in § 12-18-103(6), the intake officer shall immediately notify the
 19 central intake of the Department of Human Services.
 20

21 SECTION 12. Arkansas Code § 9-27-313(c), regarding taking a child into
 22 custody under the Arkansas Juvenile Code, is amended to read as follows:

23 (c) When a law enforcement officer, a representative of the
 24 department, or other authorized person takes custody of a juvenile alleged to
 25 be dependent-neglected or ~~pursuant to~~ under the ~~Arkansas Child Maltreatment~~
 26 ~~Act, § 12-12-501 et seq.~~ Child Maltreatment Act, § 12-18-101 et seq., he or
 27 she shall:

28 (1)(A) Notify the department and make every effort possible to
 29 notify the custodial parent, guardian, or custodian of the juvenile's
 30 location.

31 (B) The notification to the parents shall be in writing
 32 and shall include a notice:

33 (i) That the juvenile has been taken into foster
 34 care;

35 (ii) Of the name, location, and phone number of the
 36 person at the department whom they can contact about the juvenile;

1 (iii) Of the juvenile's and parents' rights to
2 receive a copy of any petition filed under this subchapter;

3 (iv) Of the location and telephone number of the
4 court; and

5 (v) Of the procedure for obtaining a hearing; or
6 (2) Return the juvenile to his or her home.

7
8 SECTION 13. Arkansas Code § 9-27-314(a)(2), regarding emergency orders
9 under the Arkansas Juvenile Code, is amended to read as follows:

10 (2) In any case in which there is probable cause to believe that
11 an emergency order is necessary to protect the juvenile from severe
12 maltreatment, as defined in ~~§ 12-12-503(16)~~ § 12-18-103(17), the court shall
13 issue an ex parte order to provide specific appropriate safeguards for the
14 protection of the juvenile if the alleged offender:

15 (A) Has a legal right to custody or visitation with the
16 juvenile;

17 (B) Has a property right allowing access to the home where
18 the juvenile resides; or

19 (C) Is a juvenile.

20
21 SECTION 14. Arkansas Code § 9-27-330(a)(1)(C), regarding transfers of
22 custody under the Arkansas Juvenile Code, is amended to read as follows:

23 (C) This transfer of custody shall not include placement
24 of adjudicated delinquents into the custody of the Department of Human
25 Services for the purpose of foster care except as provided ~~in § 12-12-516~~
26 under the Child Maltreatment Act, § 12-18-101 et seq.;

27
28 SECTION 15. Arkansas Code § 9-28-217(a)(16), regarding the
29 confidentiality of juvenile records, is amended to read as follows:

30 (16) A multidisciplinary team coordinating a child maltreatment
31 investigation ~~pursuant to under the Arkansas Child Maltreatment Act, § 12-12-~~
32 ~~501 et seq.~~ Child Maltreatment Act, § 12-18-101 et seq., pertaining to the
33 juvenile; and

34
35 SECTION 16. Arkansas Code § 9-28-407(h)(1)(C), regarding the licenses
36 required and issued for a child welfare agency, is amended to read as

1 follows:

2 (C) To multidisciplinary teams under ~~§ 12-12-502(b)~~ § 12-
3 18-106(a);

4

5 SECTION 17. Arkansas Code § 9-28-903(21)(D), regarding foster parent
6 support, is amended to read as follows:

7 (D) To have child maltreatment allegations investigated in
8 accordance with the ~~Arkansas Child Maltreatment Act, § 12-12-501 et seq.~~
9 Child Maltreatment Act, § 12-18-101 et seq., and any removal of a child in
10 foster care shall be pursuant to the Division of Children and Family Services
11 policies and procedures; and

12

13 SECTION 18. Arkansas Code § 9-34-203(a), regarding the care of the
14 child, is amended to read as follows:

15 (a) Upon delivery of the child to a law enforcement agency or a
16 medical provider, the law enforcement officer or an appropriate hospital
17 employee shall take the child into protective custody for seventy-two (72)
18 hours ~~pursuant to § 12-12-516,~~ under the Child Maltreatment Act, § 12-18-101
19 et seq.

20

21 SECTION 19. Arkansas Code § 12-8-502(b), regarding the administration
22 of the child abuse hotline and investigations of reports made to the child
23 abuse hotline, is amended to read as follows:

24 (b) The division shall consist of two (2) sections:

25 (1)(A) The Investigation Section, which shall be staffed with
26 civilian personnel and shall be responsible for the investigation of
27 allegations of child abuse in accordance with the ~~Arkansas Child Maltreatment~~
28 Act, § 12-12-501 et seq. Child Maltreatment Act, § 12-18-101 et seq.

29 (B) Unless the case involves alleged severe maltreatment, if at
30 any point during the investigation of alleged child maltreatment the
31 information gathered becomes sufficient for a possible criminal prosecution,
32 then the case shall be referred for further investigation to the appropriate
33 law enforcement agency.

34 (C) The Investigation Section shall complete an
35 investigation of all cases assigned to the Investigation Section and refer
36 the case to a local law enforcement agency or a prosecuting attorney for

1 possible criminal prosecution; and

2 (2) The Child Abuse Hotline Section, which shall administer
 3 twenty-four-hour toll-free inward wide-area telephone services (INWATS) to
 4 report to the Department of Arkansas State Police information regarding
 5 possible incidents of child abuse.

6
 7 SECTION 20. Arkansas Code § 12-8-505 is amended to read as follows:
 8 12-8-505. Child abuse hotline and investigations.

9 The child abuse hotline and child abuse investigations referred to in
 10 this subchapter shall be operated and conducted in accordance with ~~§ 12-12-~~
 11 ~~501 et seq.~~ the Child Maltreatment Act, § 12-18-101 et seq.

12
 13 SECTION 21. Arkansas Code § 12-8-509 is amended to read as follows:
 14 12-8-509. Additional reporting required.

15 (a) The state agency or entity responsible for administering the
 16 twenty-four-hour toll-free child abuse hotline or investigating an incident
 17 of neglect as defined under ~~§ 12-12-503(12)(B)~~ § 12-18-103(13)(B) shall:

18 (1) Develop and maintain statewide statistics of the incidents
 19 of neglect reported or investigated under ~~§ 12-12-503(12)(B)~~ § 12-18-
 20 103(13)(B);

21 (2)(A) Annually report no later than October 1 to the following:

22 (i) The Senate Interim Committee on Children and
 23 Youth;

24 (ii) The House Interim Committee on Aging, Children
 25 and Youth, Legislative and Military Affairs;

26 (iii) The Senate Interim Committee on Public Health,
 27 Welfare, and Labor; and

28 (iv) The House Interim Committee on Public Health,
 29 Welfare, and Labor.

30 (B) The annual report under this section shall include all
 31 findings and statistics regarding incidents of neglect reported or
 32 investigated under ~~§ 12-12-503(12)(B)~~ § 12-18-103(13)(B), including, but not
 33 limited to, the following information:

34 (i) The age of the mother;

35 (ii) The type of illegal substance to which the
 36 newborn child was exposed prenatally;

1 (iii) The estimated gestational age of the newborn
2 child at the time of birth; and

3 (iv) The newborn child's health problems; and

4 (3)(A) Notify each mandatory reporter who makes a call to the
5 hotline if the mandatory reporter's call is not accepted or is screened out
6 on a subsequent hotline supervisor review.

7 (B) The notification required under subdivision (a)(3)(A) of
8 this section shall be made within forty-eight (48) hours, excluding weekends
9 and holidays, after a mandatory reporter makes a call to the hotline that is
10 not accepted or is screened out on a subsequent hotline supervisor review.

11 (b) If more than one (1) state agency or entity is responsible for
12 administering the twenty-four-hour toll-free child abuse hotline or
13 investigating an incident of neglect as defined under ~~§ 12-12-503(12)(B)~~ §
14 12-18-103(13)(B), then the reporting under this section shall be a
15 collaborative effort by all state agencies or entities involved.

16
17 SECTION 22. Arkansas Code § 12-9-113(c), regarding domestic violence
18 training, is amended to read as follows:

19 (c) Pertaining to child abuse victim interview techniques, the topics
20 that shall be covered are:

21 (1) Current law, including the ~~Arkansas Child Maltreatment Act,~~
22 ~~§ 12-12-501 et seq.~~ Child Maltreatment Act, § 12-18-101 et seq., and the
23 Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

24 (2) Child sexual abuse; and

25 (3) Physical and behavioral indicators.

26
27 SECTION 23. Arkansas Code § 12-12-402(c), regarding procedures
28 governing medical treatment, is amended to read as follows:

29 (c)(1) Any victim under eighteen (18) years of age shall be examined
30 and treated, and any injuries requiring medical attention ~~will~~ shall be
31 treated in the standard manner.

32 (2) A medical-legal examination shall be performed, and
33 specimens shall be collected for evidence.

34 (3) The reporting medical facility or licensed health care
35 provider shall follow the procedures set forth in ~~§ 12-12-507~~ subchapter 4 of
36 the Child Maltreatment Act, § 12-18-101 et seq., regarding the reporting of

1 injuries to victims under eighteen (18) years of age.

2 (4) The evidence shall be turned over to the law enforcement
 3 officers when they arrive to assume responsibility for investigation of the
 4 incident.

5
 6 SECTION 24. Arkansas Code § 12-12-403(b)(2)(B), regarding examinations
 7 and treatment, is amended to read as follows:

8 (B) Subdivision (b)(2)(A) of this section does not preclude a
 9 report of suspected abuse or neglect as permitted or required by the ~~Arkansas~~
 10 ~~Child Maltreatment Act, § 12-12-501 et seq.~~ Child Maltreatment Act, § 12-18-
 11 101 et seq.

12
 13 SECTION 25. Arkansas Code § 12-12-917(b)(4)(C), regarding procedures
 14 governing medical treatment, is amended to read as follows:

15 (C) Assessment personnel shall report ongoing child
 16 maltreatment as required under the ~~Arkansas Child Maltreatment Act, § 12-12-~~
 17 ~~501 et seq.~~ Child Maltreatment Act, § 12-18-101 et seq.

18
 19 SECTION 26. Arkansas Code § 20-16-808 is amended to read as follows:
 20 20-16-808. When consent of parent not required.

21 Consent under this subchapter shall not be required to be obtained from
 22 a parent if:

23 (1) Both of the parents' whereabouts are unknown; or

24 (2)(A) If the minor has only one (1) living parent and the minor
 25 states by affidavit that the parent has committed incest with the minor, has
 26 raped the minor, or has otherwise sexually abused the minor.

27 (B) The attending physician shall report the abuse as
 28 provided under ~~§§ 12-12-504 and 12-12-507~~ the Child Maltreatment Act, § 12-
 29 18-101 et seq.

30
 31 SECTION 27. Arkansas Code § 20-76-404(c), regarding the duration of
 32 assistance and extended support services, is amended to read as follows:

33 (c) The department shall ~~within thirty (30) calendar days~~ exempt or
 34 temporarily defer within thirty (30) calendar days the following persons from
 35 the twenty-four-month cumulative limit on financial assistance:

36 (1) An individual, as determined by a department case manager,

1 who cooperated and participated in activities, but was unable to obtain
2 employment because of circumstances or barriers beyond his or her control;

3 (2) Child-only cases;

4 (3) An individual unable to obtain employment because of the
5 lack of support services necessary to overcome barriers to employment;

6 (4) A parent or caregiver over sixty (60) years of age;

7 (5) A parent or caregiver who is caring for a disabled child
8 relative or disabled adult relative, based upon criteria set forth in the
9 department's regulations;

10 (6) A disabled parent or caregiver, based upon criteria set
11 forth in the department's regulations;

12 (7) A parent less than eighteen (18) years old who resides in
13 the home of a parent or in an approved adult-supervised setting and who
14 participates in full-time education or training;

15 (8) An individual, who as determined by a department case
16 manager, is unable to obtain employment due directly to the effects of
17 domestic violence. All case manager determinations made under this
18 subdivision (c)(8) shall be reviewed by a supervisor within five (5) days of
19 the determination;

20 (9) Other individuals as determined by the department,
21 including, but not limited to, a child when necessary to protect the child
22 from the risk of neglect, as defined by ~~§ 12-12-503(6)~~ § 12-18-103(6); and

23 (10) Individuals participating in education and training
24 activities who have reached the end of their twenty-four-month cumulative
25 limit on financial assistance, have complied with all transitional employment
26 assistance regulations, are making satisfactory academic progress as
27 determined by the academic institution or training program in which the
28 individual is currently enrolled, and are expected to complete the
29 requirements for the education or training program within a reasonable period
30 of time as defined in regulations issued by the department.

31
32 SECTION 28. Arkansas Code § 20-78-220(c)(1), regarding the
33 confidentiality of information regarding incidents of persons or facilities
34 abusing juveniles in their custody, is amended to read as follows:

35 (c)(1) Information pertaining to child maltreatment is confidential
36 under ~~§ 12-12-506~~ the Child Maltreatment Act, § 12-18-101 et seq.

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SECTION 29. Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.

APPROVED: 4/1/2009