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2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 287

4

5 By: Senator A. Clark

6 By: Representative Capp

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For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING CHILD MALTREATMENT
10 INVESTIGATIONS AND THE PLACEMENT OF A NAME ON THE
11 CHILD MALTREATMENT CENTRAL REGISTRY; TO REPEAL
12 CERTAIN PROVISIONS OF THE CHILD MALTREATMENT ACT; AND
13 FOR OTHER PURPOSES.

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Subtitle

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

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SECTION 1. DO NOT CODIFY. Legislative findings and intent.

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(a) The General Assembly finds that:

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(1) All members of society desire the safety of all children;

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(2) A child raised under constant adult supervision may miss

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opportunities for growth that will negatively impact his or her mental and
physical development;

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(3) The alarming rise of childhood obesity and diabetes is

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almost certainly linked to an increase in the sedentary lifestyle and lack of

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physical activity for children today, which is often encouraged by parents

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and guardians, including without limitation by insisting on driving their



1 children to school;

2 (4) As measured by incidences of mental health difficulties, the
3 over-supervised youth of today experience more difficulties when they reach
4 adulthood than earlier generations;

5 (5) Earlier generations learned resilience by walking,
6 bicycling, playing, helping, and solving problems without constant adult
7 intervention;

8 (6) Parents and guardians are often in the best position to
9 weigh the risk and make decisions concerning the safety of children under
10 their care, including without limitation where their child may go, with whom,
11 and when; and

12 (7) Parents and guardians who have done nothing more than
13 briefly and safely permitted their children to remain unsupervised should not
14 be subject to investigation and possible prosecution as it causes unnecessary
15 governmental intrusion and diversion of valuable public resources.

16 (b) It is the intent of the General Assembly that this act:

17 (1) Protect and promote the inherent right of a parent or
18 guardian to raise his or her children;

19 (2) Protect the decision of a parent or a guardian to grant his
20 or her children unsupervised time to engage in activities that include
21 without limitation playing outside, walking to school, bicycling, remaining
22 briefly in a vehicle, and remaining at home; and

23 (3) Ensure that valuable public resources are used most
24 effectively to protect children by providing a secondary review to ensure
25 that:

26 (A) Calls to the Child Abuse Hotline are properly
27 accepted;

28 (B) Child maltreatment investigations are closed when the
29 results of the investigation indicate that the allegations lack merit; and

30 (C) Only the names of offenders who pose a risk to a
31 vulnerable population are placed on the Child Maltreatment Central Registry.

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33 SECTION 2. Arkansas Code § 12-18-303, concerning minimum requirements
34 for a report to be accepted by the Child Abuse Hotline, is amended to add an
35 additional subsection to read as follows:

36 (e)(1)(A) A report of child maltreatment that does not meet the

1 requirements of subsection (a) of this section shall not be accepted by the
2 Child Abuse Hotline.

3 (B) The Child Abuse Hotline may accept a report of child
4 maltreatment that does not meet the requirements of subsection (a) of this
5 section if sufficient information is provided to accept the report under §§
6 12-18-304 -- 12-18-310.

7 (2)(A) The Department of Human Services and the Department of
8 Arkansas State Police shall establish procedures for the Child Abuse Hotline.

9 (B) The procedures established by the Department of Human
10 Services and the Department of Arkansas State Police shall include without
11 limitation the:

12 (i) Creation of a secondary review of an accepted
13 report of child maltreatment by the investigating agency assigned under § 12-
14 18-601 to ensure that the report of child maltreatment meets the requirements
15 of this section; and

16 (ii) Ability of the Child Abuse Hotline and the
17 investigating agency to contact the Department of Human Services to obtain or
18 determine information relevant to whether a report of child maltreatment
19 should be accepted.

20 (3) A report of child maltreatment that does not meet the
21 requirements of subsection (a) of this section shall be considered screened-
22 out for the purposes of releasing information under § 12-18-910.

23
24 SECTION 3. Arkansas Code § 12-18-601 is amended to read as follows:

25 12-18-601. Assignment to investigative agency.

26 ~~(a)(1) When a person, agency, corporation, or partnership then~~
27 ~~providing substitute care for any child in the custody of the Department of~~
28 ~~Human Services or a Department of Human Services employee or employee's~~
29 ~~spouse or other person residing in the home is reported as being suspected of~~
30 ~~child maltreatment, the investigation shall be conducted pursuant to~~
31 ~~procedures established by the Department of Human Services~~ If a report of
32 child maltreatment is accepted by the Child Abuse Hotline, an investigation
33 shall be conducted under procedures established by the Department of Human
34 Services.

35 (2) The procedures established by the Department of Human
36 Services shall require the:

1 (A) Assignment of a report of child maltreatment to the
2 Department of Human Services or the Department of Arkansas State Police as
3 the investigating agency;

4 (B) Assignment of a report of child maltreatment to the
5 Department of Arkansas State Police if the report involves:

6 (i) Severe maltreatment;

7 (ii) A person, agency, corporation, or partnership
8 that provides substitute care for a child who is in the custody of the
9 Department of Human Services; or

10 (iii) A person, agency, corporation, or partnership
11 that provides substitute care for a child who is in the custody of an
12 employee of the Department of Human Services or another person who resides in
13 the home of an employee of the Department of Human Services; and

14 (C) Assignment of a report of child maltreatment that
15 qualifies for triage procedures that are developed and implemented under this
16 section and as prescribed by triage procedures in lieu of an assignment for
17 investigation by the Department of Human Services or the Department of
18 Arkansas State Police.

19 ~~(b)(1)(A) The procedures described in subsection (a) of this section~~
20 ~~shall include referral of allegations to the Department of Arkansas State~~
21 ~~Police and any other appropriate law enforcement agency if the allegation~~
22 ~~involves severe maltreatment~~ After the assignment of a report of child
23 maltreatment, the investigating agency shall initiate an investigation as
24 provided under this subchapter.

25 (B) After initiating the investigation and interviewing
26 the alleged victim, the investigating agency shall review the report of child
27 maltreatment to determine if the investigation should be administratively
28 closed under § 12-18-702 without complying with the requirements of this
29 subchapter regarding a complete investigation.

30 (C) If an investigation is not administratively closed
31 under § 12-18-702, the investigating agency shall comply with the
32 requirements of this subchapter regarding a complete investigation.

33 (2)(A) The investigating agency shall administratively close an
34 investigation under procedures that are established by the Department of
35 Human Services.

36 (B) The procedures established by the Department of Human

1 Services shall require the:

2 (i) Closure of an investigation if there is no
3 evidence to support the report of child maltreatment other than the report
4 made to the Child Abuse Hotline;

5 (ii) Closure of an investigation if there is
6 insufficient detail to investigate the report of child maltreatment;

7 (iii)(a) Closure of an investigation that is based
8 on an allegation made by an anonymous reporter if there is no evidence to
9 corroborate the report of child maltreatment after the investigating agency
10 has conducted a preliminary investigation to determine whether there is any
11 evidence to corroborate the report of child maltreatment.

12 (b) A preliminary investigation shall include:

13 (1) An interview with the alleged
14 victim;

15 (2) A visit to the home of the alleged
16 victim if appropriate given the type of child maltreatment alleged; and

17 (3) Evidence from a collateral witness;

18 (iv) Closure of an investigation if:

19 (a) There has not been an additional report of
20 abuse or neglect that has been committed by the alleged offender who is the
21 subject of the current report;

22 (b) The investigator reviews the prior history
23 of child maltreatment related to the family of the child and to the offender
24 and determines that the health and safety of the child can be assured without
25 further investigation by the Department of Human Services or the Department
26 of Arkansas State Police; and

27 (c) The investigator determines that abuse or
28 neglect of the child did not occur; and

29 (v) Approval of the:

30 (a) Director of the Division of Children and
31 Family Services of the Department of Human Services or his or her designee
32 for the administrative closure of an investigation that is conducted by the
33 Department of Humans Services; or

34 (b) Director of the Department of Arkansas
35 State Police or his or her designee for the administrative closure of an
36 investigation conducted by the Department of Arkansas State Police.

1 ~~(e) Upon referral, the Department of Arkansas State Police shall~~
 2 ~~investigate the allegations.~~

3 ~~(d)(1)(c)(1)~~ The Department of Human Services and the Department of
 4 Arkansas State Police may develop and implement triage procedures for
 5 accepting and documenting reports of child maltreatment of a child not at
 6 risk of imminent harm ~~if an appropriate referral is made to a community~~
 7 ~~organization or voluntary preventive service.~~

8 (2) The Department of Human Services and the Department of
 9 Arkansas State Police shall not implement this section until rules necessary
 10 to carry out this subsection have been promulgated pursuant to the Arkansas
 11 Administrative Procedure Act, § 25-15-201 et seq.

12 ~~(e)(1)(d)(1)~~ With regard to the procedures ~~described in subdivisions~~
 13 ~~(d)(1) and (2)~~ established in accordance with subsections (a) and (b) of this
 14 section, the Department of Human Services shall assess the safety of a child
 15 upon the receipt of an accepted child maltreatment report.

16 (2) The assessment under subdivision ~~(e)(1)~~ (d)(1) of this
 17 section shall include each underlying issue or additional child maltreatment
 18 concern that may not have been identified in the original Child Abuse Hotline
 19 report.

20 ~~(f)(e)~~ The Department of Human Services shall work with families
 21 related to an accepted child maltreatment report to remedy the conditions or
 22 issues that resulted in the child maltreatment report.

23
 24 SECTION 4. Arkansas Code § 12-18-623 is repealed.

25 ~~12-18-623. No merit investigations.~~

26 ~~(a) A Department of Arkansas State Police investigator may close an~~
 27 ~~investigation of a report of child maltreatment as unsubstantiated without~~
 28 ~~complying with the requirements of this subchapter if:~~

29 ~~(1) The child identified as the victim:~~

30 ~~(A) Has been:~~

31 ~~(i) Interviewed separately and apart from the~~
 32 ~~alleged offender or any representative or attorney for the alleged offender~~
 33 ~~when the child is of the age or ability to be interviewed; or~~

34 ~~(ii) Observed separately and apart from the alleged~~
 35 ~~offender or any representative or attorney for the alleged offender when the~~
 36 ~~child is not of the age or ability to be interviewed; and~~

1 ~~(B) Credibly denies the allegation of child maltreatment;~~
2 ~~(2) The child identified as the victim does not have the~~
3 ~~physical injuries or physical conditions that were alleged in the report of~~
4 ~~child maltreatment;~~

5 ~~(3) The person identified as the alleged offender has been~~
6 ~~interviewed and credibly denies the allegation of child maltreatment;~~

7 ~~(4) The person identified as the alleged offender resides in the~~
8 ~~home or is a family member of the child identified as the victim and the~~
9 ~~Department of Arkansas State Police investigator has ascertained the~~
10 ~~environment in which the child resides and determined there is no merit to~~
11 ~~the report of child maltreatment as it pertains to the home environment;~~

12 ~~(5) The Department of Arkansas State Police investigator:~~

13 ~~(A) Has:~~

14 ~~(i) Interviewed the person who made the report to~~
15 ~~the Child Abuse Hotline; or~~

16 ~~(ii) Made a good faith effort to contact the person~~
17 ~~who made the report to the Child Abuse Hotline but is unable to interview the~~
18 ~~person; and~~

19 ~~(B) Has not identified another maltreatment or health or~~
20 ~~safety factor regarding the child identified as the victim; and~~

21 ~~(6) The Department of Arkansas State Police investigator~~
22 ~~interviewed a collateral witness and reviewed medical, school, and mental~~
23 ~~health records that are related to the allegations when the child identified~~
24 ~~as the victim was unable to effectively communicate.~~

25 ~~(b) The Children's Advocacy Centers of Arkansas shall conduct forensic~~
26 ~~interviews, forensic medical examinations, and forensic mental health~~
27 ~~examinations if available and appropriate during the course of a child~~
28 ~~maltreatment investigation as is required by the memorandum of understanding~~
29 ~~authorized under § 9-5-110.~~

30 ~~(c) All records under this section shall be released under §§ 12-18-~~
31 ~~620 and 12-18-910.~~

32 ~~(d) This section does not apply if the alleged victim is in the~~
33 ~~custody of the Department of Human Services and the alleged act or omission~~
34 ~~occurred while the child was in the custody of the Department of Human~~
35 ~~Services.~~

36

1 SECTION 5. Arkansas Code § 12-18-702 is amended to read as follows:

2 12-18-702. Investigative determination.

3 (a) Upon completion of an investigation under this chapter, the
4 Department of Human Services and the Department of Arkansas State Police
5 shall determine whether the allegations of child maltreatment are:

6 (1)(A) Unsubstantiated.

7 (B) An unsubstantiated determination shall be entered when
8 the allegation is not supported by a preponderance of the evidence;

9 (2)(A) True.

10 (B) A true determination shall be entered when the
11 allegation is supported by a preponderance of the evidence;

12 (3)(A) True but exempted.

13 ~~(C)(B)~~ A determination of true but exempted, ~~which means~~
14 ~~that is a true determination where~~ the offender's name shall not be placed in
15 the Child Maltreatment Central Registry, shall be entered if:

16 (i) A parent practicing his or her religious beliefs
17 does not, for that reason alone, provide medical treatment for a child, but
18 in lieu of treatment the child is being furnished with treatment by spiritual
19 means alone, through prayer, in accordance with a recognized religious method
20 of healing by an accredited practitioner;

21 (ii) The offender is an underaged juvenile offender;

22 (iii) The report was true for neglect as defined
23 under § 12-18-103(14)(B); or

24 (iv) The offender is a juvenile less than fourteen
25 (14) years of age at the time of the offense; or

26 ~~(3)(A)~~(4)(A) Inactive.

27 (B) If the investigation cannot be completed, the
28 investigation shall be determined incomplete and placed in inactive status.

29 (b) An investigation of a report of child maltreatment that is closed
30 under § 12-18-601 shall be documented as administratively closed without a
31 determination of whether the allegation is unsubstantiated, true, true but
32 exempt, or inactive.

33 (c)(1) If the Department of Human Services or the Department of
34 Arkansas State Police determines that a report of child maltreatment is true,
35 the Department of Human Services shall determine whether the offender may
36 pose a risk of maltreatment to a vulnerable population, including without

1 limitation children, the elderly, persons with a disability, and persons with
2 a mental health illness.

3 (2)(A) The Department of Human Services shall establish
4 procedures to determine the risk level of the offender and any vulnerable
5 population to which the offender may pose a risk of maltreatment.

6 (B) The procedures of the Department of Human Services
7 shall require the following factors to be considered in the determination of
8 whether an offender may pose a risk of maltreatment to a vulnerable
9 population:

10 (i) The severity of the child maltreatment;

11 (ii) The nature and severity of an injury or other
12 adverse impact caused by the child maltreatment;

13 (iii) The access the offender has to a vulnerable
14 population;

15 (iv) Any previous substantiated child maltreatment
16 findings against the offender;

17 (v) A subsequent report of child maltreatment
18 alleged against the offender; and

19 (vi) The criminal history of the offender.

20
21 SECTION 6. Arkansas Code § 12-18-812(d)(2), concerning preliminary
22 administrative hearings under the Child Maltreatment Act, is amended to read
23 as follows:

24 (2) A child, elderly person, person with a disability, or person
25 with a mental illness may be at risk of ~~harm~~ maltreatment.

26
27 SECTION 7. Arkansas Code Title 12, Chapter 18, Subchapter 8, is
28 amended to add an additional section to read as follows:

29 12-18-815. Adjudication of allegations and risk.

30 (a) In an administrative hearing held under this chapter, an
31 administrative law judge shall determine whether:

32 (1) A preponderance of the evidence supports a finding that an
33 allegation of child maltreatment is true; and

34 (2) The Department of Human Services abused its discretion in
35 determining that an offender may pose a risk of maltreatment to a vulnerable
36 population that includes without limitation, children, the elderly, persons

1 with a disability, and persons with a mental health illness.

2 (b) An administrative law judge shall direct the name of an offender
3 to be placed on the Child Maltreatment Central Registry if a preponderance of
4 the evidence supports a finding that:

5 (1) An allegation of child maltreatment is true; and

6 (2) The department did not abuse its discretion in determining
7 that the offender may pose a risk of maltreatment to a vulnerable population.

8
9 SECTION 8. Arkansas Code § 12-18-903 is amended to read as follows:

10 12-18-903. Placement in the Child Maltreatment Central Registry.

11 (a) An offender's name shall be placed in the Child Maltreatment
12 Central Registry if:

13 (1) After notice, the offender eighteen (18) years of age or
14 older at the time the act or omission occurred does not timely request an
15 administrative hearing;

16 (2) The alleged offender was a child at the time of the act or
17 omission and the child or his or her legal parent or legal guardian waived
18 the administrative hearing;

19 (3) The administrative law judge upheld the investigative
20 determination of true pursuant to a preliminary administrative hearing; or

21 (4) Upon completion of the administrative hearing process, the
22 Department of Human Services' or Department of Arkansas State Police's
23 investigative determination of true is upheld.

24 (b) In addition to the requirements of subsection (a) of this section,
25 the name of an offender shall be placed on the Child Maltreatment Central
26 Registry only if the Department of Human Services determines under § 12-18-
27 702 that the offender may pose a risk of maltreatment to a vulnerable
28 population that includes without limitation children, the elderly, persons
29 with a disability, and persons with a mental health illness.

30
31 SECTION 9. Arkansas Code § 12-18-910(a), concerning the availability
32 of screened-out and unsubstantiated reports, is amended to read as follows:

33 (a) Screened-out, administratively closed, and unsubstantiated reports
34 of child maltreatment are confidential and may be disclosed only as provided
35 in this chapter.

36

1 SECTION 10. Arkansas Code § 12-18-910(e), concerning the availability
2 of screened-out and unsubstantiated reports, is amended to read as follows:

3 (e) Any record of a screened-out or administratively closed report of
4 child maltreatment shall not be disclosed except to the prosecuting attorney
5 and law enforcement and may be used only within the Department of Human
6 Services and the Department of Arkansas State Police for purposes of
7 administration of the program.

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10 /s/A. Clark

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13 **APPROVED: 4/9/19**
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