

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/22/13

A Bill

HOUSE BILL 2037

5 By: Representatives Harris, Fite
6

For An Act To Be Entitled

8 AN ACT TO AMEND PROVISIONS OF THE CHILD MALTREATMENT
9 ACT CONCERNING DEFINITIONS, THE RELEASE OF
10 INFORMATION, THE PROCEDURE FOR HEARINGS AND APPEALS,
11 THE PLACEMENT OF CHILDREN, AND REQUIRED NOTIFICATION;
12 AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO AMEND PROVISIONS OF THE CHILD
16 MALTREATMENT ACT.
17
18
19

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

22 SECTION 1. Arkansas Code § 12-18-103(2)(A)(i), concerning the
23 definition of "abuse" under the Child Maltreatment Act, is amended to read as
24 follows:

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

34 (i) Extreme or repeated cruelty to a child;
35

36 SECTION 2. Arkansas Code § 12-18-103(3), concerning the definition of



1 "caretaker" under the Child Maltreatment Act, is amended to read as follows:

2 (3) "Caretaker" means a parent, guardian, custodian, foster
3 parent, or any person ~~thirteen (13)~~ fourteen (14) years of age or older who
4 is entrusted with a child's care by a parent, guardian, custodian, or foster
5 parent, including without limitation, an agent or employee of a public or
6 private residential home, child care facility, public or private school, or
7 any person responsible for a child's welfare, but excluding the spouse of a
8 minor;

9

10 SECTION 3. Arkansas Code § 12-18-103(13)(A), concerning the definition
11 of "neglect" under the Child Maltreatment Act, is amended to read as follows:

12 (13)(A) "Neglect" means those acts or omissions of a parent,
13 guardian, custodian, foster parent, or any person who is entrusted with the
14 child's care by a parent, custodian, guardian, or foster parent, including,
15 but not limited to, an agent or employee of a public or private residential
16 home, child care facility, public or private school, or any person legally
17 responsible under state law for the child's welfare, but excluding the spouse
18 of a minor and the parents of the married minor, which constitute:

19 (i) Failure or refusal to prevent the abuse of the
20 child when the person knows or has reasonable cause to know the child is or
21 has been abused;

22 (ii) Failure or refusal to provide necessary food,
23 clothing, shelter, ~~and education required by law, excluding the failure to~~
24 ~~follow an individualized educational program,~~ or medical treatment necessary
25 for the child's well-being, except when the failure or refusal is caused
26 primarily by the financial inability of the person legally responsible and no
27 services for relief have been offered;

28 (iii) Failure to take reasonable action to protect
29 the child from abandonment, abuse, sexual abuse, sexual exploitation,
30 neglect, or parental unfitness when the existence of the condition was known
31 or should have been known;

32 (iv) Failure or irremediable inability to provide
33 for the essential and necessary physical, mental, or emotional needs of the
34 child, including the failure to provide a shelter that does not pose a risk
35 to the health or safety of the child;

36 (v) Failure to provide for the child's care and

1 maintenance, proper or necessary support, or medical, surgical, or other
2 necessary care;

3 (vi) Failure, although able, to assume
4 responsibility for the care and custody of the child or to participate in a
5 plan to assume such responsibility; ~~or~~

6 (vii) Failure to appropriately supervise the child
7 that results in the child's being left alone ~~at~~;

8 (a) At an inappropriate age ~~or in~~
9 ~~inappropriate circumstances~~ creating a dangerous situation or a situation
10 that puts the child at risk of harm; or

11 (b) In inappropriate circumstances creating a
12 dangerous situation or a situation that puts the child at risk of harm;

13 (viii) Failure to appropriately supervise the child
14 that results in the child being placed in:

15 (a) Inappropriate circumstances creating a
16 dangerous situation; or

17 (b) A situation that puts the child at risk of
18 harm; or

19 (ix)(a) Failure to ensure a child between six (6)
20 years of age and seventeen (17) years of age is enrolled in school or is
21 being legally home schooled or as a result of an act or omission by the
22 child's parent or guardian, the child is habitually and without justification
23 absent from school.

24
25 SECTION 4. Arkansas Code § 12-18-103(18)(A)(i), concerning the
26 definition of "sexual abuse" under the Child Maltreatment Act, is amended to
27 read as follows:

28 (A) By a person ~~thirteen (13)~~ fourteen (14) years of age
29 or older to a person younger than eighteen (18) years of age:

30 (i) Sexual intercourse, deviate sexual
31 activity, or sexual contact by forcible compulsion;

32
33 SECTION 5. Arkansas Code § 12-18-103(18)(E)(i), concerning the
34 definition of "sexual abuse" under the Child Maltreatment Act, is amended to
35 read as follows:

36 (E) By a person younger than ~~thirteen (13)~~ fourteen (14)

1 years of age to a person younger than eighteen (18) years of age:

2 (i) Sexual intercourse, deviate sexual
3 activity, or sexual contact by forcible compulsion; or
4

5 SECTION 6. Arkansas Code § 12-18-103(21)-(23), concerning definitions
6 under the Child Maltreatment Act, is amended to read as follows:

7 (21) "Significant other" means a person:

8 (A) With whom the parent shares a household; or

9 (B) Who has a relationship with the parent that results in
10 the person acting in loco parentis with respect to the parent's child or
11 children, regardless of living arrangements;

12 (22) "Subject of the report" means:

13 (A) The offender;

14 (B) The custodial and noncustodial parents,
15 guardians, and legal custodians of the child who is subject to suspected
16 maltreatment; and

17 (C) The child who is the subject of suspected
18 maltreatment;

19 ~~(22)~~(23) "Underaged juvenile offender" means any child
20 younger than ~~thirteen (13)~~ fourteen (14) years of age for whom a report of
21 sexual abuse has been determined to be true for sexual abuse to another
22 child; and

23 ~~(23)~~(24) "Voyeurism" means looking, for the purpose of
24 sexual arousal or gratification, into a private location or place in which a
25 child may reasonably be expected to be nude or partially nude.
26

27 SECTION 7. Arkansas Code § 12-18-104, concerning confidentiality, is
28 amended to add additional subsections to read as follows:

29 (b) Any data, records, reports, or documents released under this
30 chapter to law enforcement, a prosecuting attorney, or a court by the
31 Department of Human Services are confidential and shall be sealed and not re-
32 disclosed without a protective order to ensure the items of evidence for
33 which there is a reasonable expectation of privacy are not distributed to a
34 person or institution without a legitimate interest in the evidence, provided
35 that nothing in this chapter is deemed to abrogate the right of discovery in
36 a criminal case under the Arkansas Rules of Criminal Procedure or the law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 8. Arkansas Code § 12-18-306 is amended to read as follows:

12-18-306. Reports naming an adult as the victim.

The Child Abuse Hotline shall accept a report of child sexual abuse, sexual contact, or sexual exploitation naming ~~an adult~~ as the victim a person who is now an adult only if:

- (1) The alleged offender is a caretaker of a child; and
- (2) The person making the report is one (1) of the

following:

- (A) The adult victim; or
- (B) A law enforcement officer;
- (C) ~~The adult victim's counselor or therapist;~~
- ~~(D) The alleged offender's counselor or therapist;~~
- ~~(E)~~ The alleged offender.

SECTION 9. Arkansas Code § 12-18-309 is amended to read as follows:

12-18-309. Reports alleging that a child is ~~dependent-neglected~~ dependent.

The Child Abuse Hotline shall accept telephone calls or other communications alleging that a child is a ~~dependent-neglected~~ dependent juvenile, as defined in § ~~9-27-303(18)~~ 9-27-303, and shall immediately refer this information to the Department of Human Services.

SECTION 10. Arkansas Code § 12-18-506 is amended to read as follows:

12-18-506. Notice when the alleged offender works with children, the elderly, an individual with a disability, an individual with a mental illness, ~~or~~ is engaged in child-related activities, or is a juvenile.

(a) If the Child Abuse Hotline receives a report naming as an alleged offender a person who is engaged in child-related activities or employment, works with the elderly, an individual with a disabilities, an individual with a mental illness, or is a juvenile and the Department of Human Services has determined that children, the elderly, or individuals with a disability or mental illness under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, the department may notify the following of the report made to the Child Abuse Hotline:

- 1 (1) The alleged offender's employer;
- 2 (2) The school superintendent, principal, or a person in an
- 3 equivalent position where the alleged offender is employed;
- 4 (3) The person in charge of a paid or volunteer activity; and
- 5 (4) The appropriate licensing or registering authority to the
- 6 extent necessary to carry out its official responsibilities.

7 (b) The department shall promulgate rules ~~that will~~ to ensure that

8 notification required under this section is specifically approved by a

9 responsible manager in the department before the notification is made.

10 (c) If the department, based on information gathered during the course

11 of the investigation, determines that there is no preponderance of the

12 evidence indicating that children under the care of the alleged offender

13 appear to be at risk, the department shall immediately notify the previously

14 notified person or entity of that information.

15 (d)(1) If the Child Abuse Hotline receives a report naming a juvenile

16 as an alleged offender who is in a setting or circumstances where other

17 children may be at risk, the department may notify the entity or person in

18 charge about the Child Abuse Hotline report.

19 (2) The department shall promulgate rules to ensure that the

20 notification required under this section is specifically approved by a

21 responsible manager in the department before notification is made.

22 (3) If the department, based on information gathered during the

23 course of the investigation, determines that there is no preponderance of the

24 evidence indicating that children appear to be at risk, the department shall

25 immediately notify the person or entity originally notified under subdivision

26 (d)(1) of this section of that information.

27

28 SECTION 11. Arkansas Code § 12-18-507, concerning notice when the

29 alleged victim is a resident of a facility licensed, registered, or operated

30 by the state, is amended to add an additional subsection to read as follows:

31 (c) If the Child Abuse Hotline receives a report that a child in the

32 custody of the department has been subjected to child maltreatment while in

33 the custody of the department, the department shall immediately notify the

34 appropriate division director of the Child Abuse Hotline's receipt of an

35 initial report of suspected child maltreatment.

36

1 SECTION 12. Arkansas Code § 12-18-605(a)(1), concerning investigative
2 interviews, is amended to read as follows:

3 (1) The child as provided under ~~subsection (b) of this section §~~
4 12-18-608;

5
6 SECTION 13. Arkansas Code § 12-18-607(4), concerning when the alleged
7 offender is not a family member or not living in the home with the alleged
8 victim, is amended to read as follows:

9 (4) ~~If the report is determined to be true, the~~ The names and
10 conditions of any children of the alleged offender and whether these children
11 have been maltreated or are at risk of child maltreatment;

12
13 SECTION 14. Arkansas Code § 12-18-608 is amended to read as follows:
14 12-18-608. Interview of the alleged child victim, siblings of a child
15 victim, or any other children in the home or under the care of an alleged
16 offender.

17 (a) A person conducting an ~~investigation of~~ interview with a child
18 victim, sibling of a child victim, or any other children in the home or under
19 the care of an alleged offender under this chapter shall have the discretion:

20 (1) In the child's best interest, to limit the persons
21 allowed to be present when a child is being interviewed concerning
22 allegations of child maltreatment; and

23 (2) As it relates to the integrity of the investigation,
24 to limit persons present during an interview.

25 (b)(1) The interview with the child victim, siblings of a child
26 victim, or any other children in the home or under the care of an alleged
27 offender shall be conducted separate and apart from the alleged offender or
28 any representative or attorney for the alleged offender.

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

32
33 SECTION 15. Arkansas Code § 12-18-615 is amended to read as follows:
34 12-18-615. Radiology procedures, photographs, ~~videotapes~~ electronic
35 media, and medical records.

36 (a) A person who is required to make a report under this chapter may

1 take or cause to be taken radiology procedures and photographs or compile
2 medical records that may be relevant as to the existence or extent of child
3 maltreatment.

4 (b) A hospital, ~~or~~ clinic, child safety center, or the Department of
5 Human Services may make ~~videotapes~~ electronic media that may be relevant as
6 to the existence or extent of child maltreatment.

7 (c) The Department of Human Services or law enforcement officials
8 shall be provided at no cost a copy of the results of radiology procedures,
9 ~~videotapes~~ electronic media, photographs, or medical records upon request.

10
11 *SECTION 16. Arkansas Code § 12-18-702(2)(C)(iv), concerning an*
12 *investigative determination under the Child Maltreatment Act, is amended to*
13 *read as follows:*

14 *(iv) ~~The report was true for sexual abuse by an~~*
15 *~~offender at least thirteen (13) years of age and less than sixteen (16) is a~~*
16 *~~juvenile less than fourteen (14) years of age and the offender has not been~~*
17 *~~adjudicated delinquent or has not pleaded guilty, nolo contendere, or been~~*
18 *~~found guilty of an offense on the same set of facts as contained in the~~*
19 *~~report; or~~*

20
21 *SECTION 17. Arkansas Code § 12-18-703, concerning notice generally*
22 *under the Child Maltreatment Act, is amended to add an additional subsection*
23 *to read as follows:*

24 *(c)(1) The notice of the investigative determination shall include a*
25 *statement that the request for an administrative hearing shall be made within*
26 *thirty (30) days of the receipt of notice under subsection (b) of this*
27 *section.*

28 *(2) An alleged offender is not entitled to an automatic*
29 *administrative hearing if:*

30 *(A) The allegations are determined to be true; and*

31 *(B) The alleged offender's name is exempt from placement*
32 *in the Child Maltreatment Central Registry.*

33
34 *SECTION 18. Arkansas Code § 12-18-704 is amended to read as follows:*

35 *12-18-704. Notice if the investigative determination is true but*
36 *exempted and the alleged offender is a child.*

1 If the investigative determination of the report was determined true
2 but exempted under § 12-18-702(2)(C)(ii) ~~or § 12-18-702(2)(C)(iv)~~, and the
3 alleged offender is a child at the time the act or omission occurred, the
4 Department of Human Services shall notify the legal parents and legal
5 guardians of the investigative determination and that the child's name shall
6 not be placed in the Child Maltreatment Central Registry, and the alleged
7 offender may petition for an administrative hearing.

8
9 SECTION 19. Arkansas Code § 12-18-705 is amended to read as follows:

10 12-18-705. Notice if the alleged offender is ~~under~~ at least fourteen
11 years of age and less than eighteen years of age.

12 (a) If the report was determined true and the alleged offender is
13 ~~under~~ at least fourteen (14) years of age and less than eighteen (18) years
14 of age at the time the act or omission occurred, a notice shall be given as
15 provided in this section.

16 (b) The notice under this section shall be provided as follows:

17 (1) If the alleged offender is in foster care, the Department of
18 Human Services shall notify the alleged offender's counsel and the legal
19 parents, legal guardians, and current foster parents of the alleged offender;
20 or

21 (2) If the alleged offender is not in foster care, the
22 department shall notify the legal parents and legal guardians of the alleged
23 offender.

24 (c) The notice under this section shall include the following:

25 (1) The investigative determination, excluding data that would
26 identify the person who made the report to the Child Abuse Hotline;

27 (2) A statement that the matter has been referred for an
28 automatic administrative hearing that may be waived only by the alleged
29 offender or his or her parent or legal guardian in writing;

30 (3) The potential consequences to the alleged offender if the
31 alleged offender's name is placed in the Child Maltreatment Central Registry;

32 (4) A statement that the alleged offender has a right to have an
33 attorney and if the person cannot afford an attorney to contact Legal
34 Services;

35 (5) A statement that if the alleged offender's name is placed on
36 the registry, the alleged offender's name may be automatically removed after

1 one (1) year or the alleged offender may be able to petition for removal
2 after one (1) year, depending on the finding;

3 (6) A statement that the administrative hearing may take place
4 in person if requested by the alleged offender, the alleged offender's parent
5 or guardian, or the alleged offender's attorney within thirty (30) days from
6 the date that the alleged offender receives notification under this section;
7 and

8 (7) The name of the person making the notification, his or her
9 title or position, and current contact information.

10

11 SECTION 20. Arkansas Code § 12-18-707 is amended to read as follows:

12 12-18-707. Notice when the alleged offender works with children, the
13 elderly, an individual with a disability, an individual with a mental
14 illness, ~~or~~ is engaged in child-related activities, or is a juvenile.

15 (a) If the child maltreatment investigative determination names as an
16 alleged offender a person who is engaged in child-related activities or
17 employment, works with the elderly, an individual with a disability, an
18 individual with a mental illness, or is a juvenile and the Department of
19 Human Services has determined that children, the elderly, or individuals with
20 a disabilities or mental illness under the care of the alleged offender
21 appear to be at risk of maltreatment by the alleged offender, the department
22 may notify the following of the investigative determination:

23 (1) An alleged offender's employer;

24 (2) A school superintendent, principal, or a person in an
25 equivalent position where the alleged offender is employed;

26 (3) A person in charge of a paid or volunteer activity;

27 and

28 (4) Any licensing or registering authority to the extent
29 necessary to carry out its official responsibilities.

30 (b) The department shall promulgate rules that will ensure that
31 notification required under this section is specifically approved by a
32 responsible manager in the department before the notification is made.

33 (c) If the department later determines that there is no preponderance
34 of the evidence indicating that children under the care of the alleged
35 offender appear to be at risk, the department shall immediately notify the
36 previously notified person or entity of that information.

1 (d)(1) If the child maltreatment investigation names as an alleged
2 offender a juvenile who is in a setting or circumstance where other children
3 appear to be at risk, the department may notify the entity or person in
4 charge about the investigative determination.

5 (2) The department shall promulgate rules to ensure that the
6 notification required under this section is specifically approved by a
7 responsible manager in the department before notification is made.

8 (3) If the department later determines that there is no
9 preponderance of the evidence indicating that other children are at risk or
10 if the investigative determination is overturned, the department shall
11 immediately notify the entity or person originally notified under subdivision
12 (d)(1) of this section of that information.

13
14 SECTION 21. Arkansas Code § 12-18-711(a), concerning fee for copying
15 an investigative file under the Child Maltreatment Act, is amended to read as
16 follows:

17 (a) Except as provided under subsection (b) of this section, the
18 Department of Human Services may charge:

19 (1) A reasonable fee not to exceed ten dollars (\$10.00)
20 for researching, copying, ~~and~~ or mailing records ~~of an~~ from a child
21 maltreatment investigative file under this chapter; and

22 (2) A reasonable fee for reproducing copies of ~~tapes~~
23 electronic media, such as audio tapes, video recordings, compact discs, or
24 DVDs and photographs.

25
26 SECTION 22. Arkansas Code § 12-18-801 is amended to read as follows:

27 12-18-801. Time to complete administrative hearing.

28 (a)(1)(A) The administrative hearing ~~process~~ under this chapter ~~must~~
29 ~~be completed~~ shall begin within one hundred eighty (180) days from the date
30 of the receipt of the request for a hearing, ~~or the administrative law judge~~
31 ~~shall enter an order overturning the investigative agency's investigative~~
32 ~~determination of true.~~

33 (B) However, delays in completing the administrative
34 hearing that are attributable to either party shall not count against the
35 limit of one hundred eighty (180) days if the administrative law judge
36 determines that good cause for the delay is shown by the party requesting the

1 delay and the request for delay is made in writing and delivered to the
2 Office of Appeals and Hearings of the Department of Human Services and all
3 other parties.

4 (2)(A) ~~If an order is entered overturning the investigating~~
5 ~~agency's investigative determination of true because of the failure to~~
6 ~~complete the administrative hearing process within one hundred eighty (180)~~
7 ~~days, the~~ The Department of Human Services shall report any failures to
8 comply with this subsection for each quarter to the House Committee on Aging,
9 Children and Youth, Legislative and Military Affairs and the Senate Interim
10 Committee on Children and Youth.

11 (B) The quarterly report to the House Committee on Aging,
12 Children and Youth, Legislative and Military Affairs and the Senate Interim
13 Committee on Children and Youth shall include a written explanation of the
14 failure of the department.

15 (b)(1) The limit of one hundred eighty (180) days for an
16 administrative hearing under this chapter shall not apply if ~~there is an~~
17 ~~ongoing criminal or delinquency investigation or criminal or delinquency~~
18 ~~charges have been filed or will be filed regarding the occurrence that is the~~
19 ~~subject of the child maltreatment report~~ upon request of any party a stay is
20 granted as permitted under this section.

21 (2) ~~In a case described under subdivision (b)(1) of this~~
22 ~~section, the administrative hearing shall be stayed pending final disposition~~
23 ~~of the criminal or delinquency proceedings~~ The administrative law judge may
24 stay the case upon a showing by any party that there is an ongoing criminal
25 or delinquency investigation regarding the occurrence that is the subject of
26 the child maltreatment report.

27
28 (3)(A) If a criminal or delinquency proceeding is filed
29 regarding the occurrence that is the subject of the child maltreatment report
30 and a request for a stay is accompanied by the written notification of the
31 date the criminal or delinquency proceeding was filed by a party, the
32 administrative hearing shall be stayed for a period of not more than one (1)
33 year from the date the criminal or delinquency proceeding is filed.

34 (B) The stay shall be lifted and the case set for a
35 hearing upon the earlier of:

36 (i) A petition and showing by any party that there

1 is good cause to conduct the administrative hearing before the conclusion of
2 the criminal or delinquency proceeding;

3 (ii) The final disposition of the criminal or
4 delinquency proceeding; or

5 (iii) The expiration of one (1) year from the date
6 the criminal or delinquency proceeding was filed.

7 (C) A stay granted under this section may be extended
8 after the one year expiration upon a written notice from the requesting party
9 that the criminal or delinquency investigation or proceeding is still
10 ongoing.

11 (D)(i) It is the duty of the petitioner to report the
12 final disposition of the criminal or delinquency proceeding to the Office of
13 Appeals and Hearings of the Department of Human Services for a stay granted
14 under subdivision (3) of this section.

15 (ii) The case shall be dismissed and the
16 petitioner's name placed on the Child Maltreatment Central Registry if the
17 petitioner fails to provide a file-marked copy of the final disposition of
18 the criminal or delinquency proceeding within thirty (30) days of the entry
19 of the final disposition.

20 ~~It shall be the duty of the petitioner to report the final disposition of the~~
21 ~~criminal or delinquency proceeding to the department.~~

22 ~~(4) Each report shall include a file-marked copy of the criminal~~
23 ~~or delinquency disposition.~~

24 ~~(5) The request for an administrative hearing shall be deemed~~
25 ~~waived if the petitioner fails to report the disposition of the criminal or~~
26 ~~delinquency proceedings within thirty (30) days of the entry of a dispositive~~
27 ~~judgment or order.~~

28 ~~(6) If the criminal or delinquency proceedings have not reached~~
29 ~~a final outcome within twelve (12) months of the filing of the request for~~
30 ~~administrative hearing, the administrative appeal will be deemed waived if~~
31 ~~the petitioner fails to provide a written statement of the status of the~~
32 ~~criminal or delinquency proceedings every sixty (60) days and a disposition~~
33 ~~report within thirty (30) days of the entry of a dispositive judgment or~~
34 ~~order.~~

35
36 SECTION 23. Arkansas Code § 12-18-805(b), concerning video

1 teleconferencing and teleconferencing options, is amended to read as follows:

2 (b) If any party requests an in-person administrative hearing within
3 thirty (30) days from the date that the party receives notification of the
4 investigative determination, the in-person administrative hearing shall be
5 conducted in an office of the Department of Human Services nearest to the
6 petitioner's residence unless the administrative law judge notifies the
7 parties that the administrative hearing will be conducted via video
8 teleconference.

9
10 SECTION 24. Arkansas Code § 12-18-807 is amended to read as follows:

11 12-18-807. Administrative judgments and adjudications.

12 (a) ~~A certified copy of a judgment or an adjudication from a court of~~
13 ~~competent jurisdiction dealing with the same subject matter as an issue~~
14 ~~concerned in an administrative hearing under this chapter shall be filed with~~
15 ~~the Office of Appeals and Hearings of the Department of Human Services~~ If a
16 court of competent jurisdiction adjudicates a question that is an issue to be
17 determined by the Office of Appeals and Hearings of the Department of Human
18 Services, the prevailing party to the judicial adjudication who is also a
19 party to the administrative adjudication shall file a certified copy of the
20 judicial adjudication with the office.

21 (b)(1) ~~A decision on any identical issue shall be rendered without an~~
22 ~~administrative hearing and shall be consistent with the judgment or~~
23 ~~adjudication~~ The office shall determine whether and to what extent the
24 judicial adjudication has preclusive effect on the administrative
25 adjudication by applying the principles of claim preclusion and issue
26 preclusion.

27 (2) ~~However, if the judgment or adjudication of the court~~
28 ~~is reversed or vacated and notice of the reversal or vacation is provided to~~
29 ~~the department, the department shall set the matter for an administrative~~
30 ~~hearing~~ The office shall not readjudicate any precluded issues.

31 (c) If the judicial adjudication is modified or reversed, the office
32 shall determine whether and to what extent any issue in the administrative
33 adjudication remains precluded, and shall schedule a hearing with respect to
34 any matter that is no longer precluded.

35
36 SECTION 25. Arkansas Code § 12-18-811(d)(1), concerning expedited

1 administrative hearings under the Child Maltreatment Act, is amended to read
2 as follows:

3 (d)(1) The department may charge:

4 (A) A reasonable fee not to exceed ten dollars
5 (\$10.00) for researching, copying, ~~and or~~ mailing records ~~of the~~ from a child
6 maltreatment investigative file; and

7 (B) A reasonable fee for reproducing copies of ~~tapes~~
8 electronic media, such as audio tapes, video tapes, compact discs, DVDs, and
9 photographs.

10

11 SECTION 26. Arkansas Code § 12-18-812(c), concerning preliminary
12 administrative hearings under the Child Maltreatment Act, is amended to read
13 as follows:

14 (c)(1) The department shall notify the administrative law judge of any
15 known criminal action related to the investigation.

16 (2) A preliminary administrative hearing shall proceed even if:

17 (A) There is an ongoing criminal or delinquency
18 investigation regarding the occurrence that is the subject of the child
19 maltreatment investigation; or

20 (B) Criminal or delinquency charges are filed or will be
21 filed regarding the occurrence that is the subject of the child maltreatment
22 investigation.

23

24 SECTION 27. Arkansas Code § 12-18-813(c), concerning notice of
25 investigative determination upon satisfaction of due process under the Child
26 Maltreatment Act, is amended to read as follows:

27 (c)(1) Upon satisfaction of due process and if the investigative
28 determination is true, if the offender is engaged in child-related activities
29 or employment, works with the elderly, an individual with a disability, an
30 individual with a mental illness, or is a juvenile and the department has
31 determined that children, the elderly, or individuals with a disabilities or
32 mental illness under the care of the offender appear to be at risk of
33 maltreatment by the offender, the department may notify the following of the
34 investigative determination:

35 (A) The offender's employer;

36 (B) A school superintendent, principal, or a person in an

1 equivalent position where the offender is employed;

2 (C) A person in charge of a paid or volunteer activity;
3 and

4 (D) Any licensing or registering authority to the extent
5 necessary to carry out its official responsibilities.

6 (2) The department shall promulgate rules that shall ensure that
7 notification required under this subsection is specifically approved by a
8 responsible manager in the department before the notification is made.

9 (3) If the department later determines that there is not a
10 preponderance of the evidence indicating that children under the care of the
11 alleged offender appear to be at risk, the department shall immediately
12 notify the previously notified person or entity of that information.

13 (4)(A) Upon satisfaction of due process, the department may
14 notify the entity or person in charge of the investigative determination if:

15 (i) The investigative determination is true; and

16 (ii) The alleged offender is a juvenile who is in a
17 setting or circumstance where other children appear to be at risk.

18 (B) The department shall promulgate rules to ensure that
19 notification required under this section is specifically approved by a
20 responsible manager in the department before notification is made.

21 (C) If the department later determines that there is no
22 preponderance of the evidence indicating that children appear to be at risk,
23 the department shall immediately notify the previously notified entity or
24 person of that information.

25
26 SECTION 28. Arkansas Code Title 12, Chapter 18, Subchapter 8, is
27 amended to add an additional section to read as follows:

28 12-18-814. Automatic hearings for juveniles.

29 (a) The Division of Children and Family Services of the Department of
30 Human Services shall provide written referrals to the Office of Appeals and
31 Hearings of the Department of Human Services identifying each juvenile that
32 is:

33 (1) The subject of a true child maltreatment finding; and

34 (2) Subject to placement on the Child Maltreatment Central
35 Registry.

36 (b) The office shall schedule an administrative hearing for each

1 juvenile identified under subsection (a) of this section.

2 (c) An administrative hearing scheduled under this section shall be
3 conducted in accordance with the administrative hearing provisions of this
4 subchapter except that the office shall not dismiss the case and place the
5 petitioner's name on the Child Maltreatment Central Registry based solely on
6 the petitioner's failure to provide a file-marked copy of the final
7 disposition of the criminal or delinquency proceeding within thirty (30) days
8 of the entry of the final disposition.

9
10 SECTION 29. Arkansas Code § 12-18-909(b), concerning the availability
11 of true reports of child maltreatment from the central registry, is amended
12 to read as follows:

13 (b)(1) The Department of Human Services may charge:

14 (A) A reasonable fee not to exceed ten dollars (\$10.00)
15 for researching, copying, ~~and or~~ mailing records ~~of the~~ from a child
16 maltreatment investigative files ~~of child maltreatment cases file~~; and

17 (B) A reasonable fee for reproducing copies of ~~tapes~~
18 electronic media, such as audio tables, video tapes, compact discs, DVDs, and
19 photographs.

20 (2) A fee may not be charged to:

21 (A) A nonprofit or volunteer agency that requests searches
22 of the investigative files; or

23 (B) A person who is indigent.

24
25 SECTION 30. Arkansas Code § 12-18-909(g)(1), concerning the
26 availability of true reports of child maltreatment from the central registry,
27 is amended to read as follows:

28 (g) A report made under this chapter that is determined to be true, as
29 well as any other information obtained, including protected health
30 information and the administrative hearing decision, and a report written or
31 photograph or radiological procedure taken concerning a true report in the
32 possession of the Department of Human Services shall be confidential and
33 shall be made available only to:

34 (1) The administration of the adoption, foster care, children's
35 and adult protective services programs, or child care licensing programs of
36 any state;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 31. Arkansas Code § 12-18-909(g)(11)(B)(ii), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(ii) The court may disclose the report to parties under the terms ~~or~~ of a protective order issued by the court;+

SECTION 32. Arkansas Code § 12-18-910(b)(1), concerning the availability of screened-out and unsubstantiated reports under the Child Maltreatment Act, is amended to read as follows:

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, ~~and or~~ mailing records of the from a child maltreatment investigative ~~files of child maltreatment cases~~ file; and

(B) A reasonable fee for reproducing copies of ~~tapes~~ electronic media, such as audio tapes, video tapes, compact discs, DVDs, and photographs.

SECTION 33. Arkansas Code § 12-18-910(f)(1), concerning the availability of screened-out and unsubstantiated reports under the Child Maltreatment Act, is amended to read as follows:

(f) An unsubstantiated report, including protected health information and the administrative hearing decision, shall be confidential and shall be disclosed only to:

(1) *The prosecuting attorney;*

SECTION 34. Arkansas Code § 12-18-910(f)(3)(B)(ii), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(ii) The court may disclose the report to parties under the terms ~~or~~ of a protective order issued by the court.

/s/Harris