

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.

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

# A Bill

SENATE BILL 464

5 By: Senators Madison, J. Key  
6 By: Representative Harrelson  
7

## For An Act To Be Entitled

10 AN ACT TO HELP TO ENSURE THE HEALTH, SAFETY, AND  
11 WELFARE OF CHILDREN BY MODERNIZING AND UPDATING  
12 THE LAW RELATED TO CHILD ABUSE AND NEGLECT; TO  
13 ADOPT THE CHILD MALTREATMENT ACT; TO REPEAL THE  
14 ARKANSAS CHILD MALTREATMENT ACT; AND FOR OTHER  
15 PURPOSES.  
16

## Subtitle

17 TO HELP TO ENSURE THE HEALTH, SAFETY,  
18 AND WELFARE OF CHILDREN BY MODERNIZING  
19 AND UPDATING THE LAW RELATED TO CHILD  
20 ABUSE AND NEGLECT.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code Title 12, Chapter 18, is amended to add an  
27 additional subchapter to read as follows:

28 CHAPTER 18

29 CHILD MALTREATMENT ACT

30 Subchapter 1.

31 General Provisions.  
32

33 12-18-101. Title.

34 This chapter shall be known and may be cited as the "Child Maltreatment  
35 Act".  
36



1 12-18-102. Purpose.

2 The purpose of this chapter is to:

3 (1) Provide a system for the reporting of known or suspected  
 4 child maltreatment;

5 (2) Ensure the immediate screening, safety assessment, and  
 6 prompt investigation of reports of known or suspected child maltreatment;

7 (3) Ensure that immediate steps are taken to:

8 (A) Protect a maltreated child and any other child under  
 9 the same care who may also be in danger of maltreatment; and

10 (B) Place a child who is in immediate danger of severe  
 11 maltreatment in a safe environment;

12 (4) Provide immunity from criminal prosecution for an individual  
 13 making a good faith report of suspected child maltreatment;

14 (5) Preserve the confidentiality of all records in order to  
 15 protect the rights of the child and of the child's parents or guardians;

16 (6) Encourage the cooperation of state law enforcement  
 17 officials, courts, and state agencies in the investigation, assessment,  
 18 prosecution, and treatment of child maltreatment; and

19 (7) Stabilize the home environment if a child's health and  
 20 safety are not at risk.

21  
 22 12-18-103. Definitions.

23 As used in this chapter:

24 (1) "Abandonment" means the failure of a parent to:

25 (A) Provide reasonable support and to maintain regular  
 26 contact with a child through statement or contact when the failure is  
 27 accompanied by an intention on the part of the parent to permit the condition  
 28 to continue for an indefinite period in the future and support or maintain  
 29 regular contact with a child without just cause; or

30 (B) An articulated intent to forego parental  
 31 responsibility.

32 (C) "Abandonment" does not include acts or omissions of a  
 33 parent toward a married minor;

34 (2)(A) "Abuse" means any of the following acts or omissions by a  
 35 parent, guardian, custodian, foster parent, person eighteen (18) years of age  
 36 or older living in the home with a child whether related or unrelated to the

1 child, or any person who is entrusted with the child's care by a parent,  
 2 guardian, custodian, or foster parent, including, but not limited to, an  
 3 agent or employee of a public or private residential home, child care  
 4 facility, public or private school, or any person legally responsible for the  
 5 child's welfare, but excluding the spouse of a minor:

6 (i) Extreme or repeated cruelty to a child;

7 (ii) Engaging in conduct creating a realistic and  
 8 serious threat of death, permanent or temporary disfigurement, or impairment  
 9 of any bodily organ;

10 (iii) Injury to a child's intellectual, emotional,  
 11 or psychological development as evidenced by observable and substantial  
 12 impairment of the child's ability to function within the child's normal range  
 13 of performance and behavior;

14 (iv) Any injury that is at variance with the history  
 15 given;

16 (v) Any nonaccidental physical injury;

17 (vi) Any of the following intentional or knowing  
 18 acts, with physical injury and without justifiable cause:

19 (a) Throwing, kicking, burning, biting, or  
 20 cutting a child;

21 (b) Striking a child with a closed fist;

22 (c) Shaking a child; or

23 (d) Striking a child on the face or head; or

24 (vii) Any of the following intentional or knowing  
 25 acts, with or without physical injury:

26 (a) Striking a child six (6) years of age or  
 27 younger on the face or head;

28 (b) Shaking a child three (3) years of age or  
 29 younger;

30 (c) Interfering with a child's breathing;

31 (d) Pinching, biting, or striking a child in  
 32 the genital area;

33 (e) Tying a child to a fixed or heavy object  
 34 or binding or tying a child's limbs together;

35 (f) Giving a child or permitting a child to  
 36 consume or inhale a poisonous or noxious substance not prescribed by a

1 physician that has the capacity to interfere with normal physiological  
 2 functions;

3 (g) Giving a child or permitting a child to  
 4 consume or inhale a substance not prescribed by a physician that has the  
 5 capacity to alter the mood of the child, including, but not limited to, the  
 6 following:

7 (1) Marijuana;

8 (2) Alcohol, excluding alcohol given to  
 9 a child during a recognized and established religious ceremony or service;

10 (3) A narcotic; or

11 (4) An over-the-counter drug if a person  
 12 purposely administers an overdose to a child or purposely gives an  
 13 inappropriate over-the-counter drug to a child and the child is detrimentally  
 14 impacted by the overdose or the over-the-counter drug;

15 (h) Exposing a child to a chemical that has  
 16 the capacity to interfere with normal physiological functions, including, but  
 17 not limited to, a chemical used or generated during the manufacture of  
 18 methamphetamine; or

19 (i) Subjecting a child to Munchausen's  
 20 syndrome by proxy or a factitious illness by proxy if the incident is  
 21 confirmed by medical personnel.

22 (B)(i) The list in subdivision (2)(A) of this section is  
 23 illustrative of unreasonable action and is not intended to be exclusive.

24 (ii) No unreasonable action shall be construed to  
 25 permit a finding of abuse without having established the elements of abuse.

26 (C)(i) "Abuse" shall not include physical discipline of a  
 27 child when it is reasonable and moderate and is inflicted by a parent or  
 28 guardian for purposes of restraining or correcting the child.

29 (ii) "Abuse" shall not include when a child suffers  
 30 transient pain or minor temporary marks as the result of an appropriate  
 31 restraint if:

32 (a) The person exercising the restraint is an  
 33 employee of an agency licensed or exempted from licensure under the Child  
 34 Welfare Agency Licensing Act, § 9-28-401 et seq.;

35 (b) The agency has policy and procedures  
 36 regarding restraints;

1 (c) No other alternative exists to control the  
 2 child except for a restraint;

3 (d) The child is in danger or hurting himself  
 4 or herself or others;

5 (e) The person exercising the restraint has  
 6 been trained in properly restraining children, de escalation, and conflict  
 7 resolution techniques;

8 (f) The restraint is for a reasonable period  
 9 of time; and

10 (g) The restraint is in conformity with  
 11 training and agency policy and procedures.

12 (iii) Reasonable and moderate physical discipline  
 13 inflicted by a parent or guardian shall not include any act that is likely to  
 14 cause and which does cause injury more serious than transient pain or minor  
 15 temporary marks.

16 (iv) The age, size, and condition of the child and  
 17 the location of the injury and the frequency or recurrence of injuries shall  
 18 be considered when determining whether the physical discipline is reasonable  
 19 or moderate;

20 (3) "Caretaker" means a parent, guardian, custodian, foster  
 21 parent, or any person ten (10) years of age or older who is entrusted with a  
 22 child's care by a parent, guardian, custodian, or foster parent, including,  
 23 but not limited to, an agent or employee of a public or private residential  
 24 home, child care facility, public or private school, or any person  
 25 responsible for a child's welfare, but excluding the spouse of a minor;

26 (4)(A) "Central intake", otherwise referred to as the "Child  
 27 Abuse Hotline", means a unit that shall be established by the Department of  
 28 Human Services for the purpose of receiving and recording notification made  
 29 pursuant to this chapter.

30 (B) The Child Abuse Hotline shall be staffed twenty-four  
 31 (24) hours per day and shall have statewide accessibility through a toll-free  
 32 telephone number;

33 (5) "Child" or "juvenile" means an individual who is from birth  
 34 to eighteen (18) years of age;

35 (6) "Child maltreatment" means abuse, sexual abuse, neglect,  
 36 sexual exploitation, or abandonment;

1           (7) “Department” means the Department of Human Services and any  
2 agency that the department has an agreement with to conduct investigations;

3           (8) “Deviate sexual activity” means any act of sexual  
4 gratification involving:

5                   (A) Penetration, however slight, of the anus or mouth of  
6 one person by the penis of another person; or

7                   (B) Penetration, however slight, of the labia majora or  
8 anus of one person by any body member or foreign instrument manipulated by  
9 another person;

10           (9)(A)(i) “Forcible compulsion” means physical force,  
11 intimidation, or a threat, express or implied, of physical injury to or  
12 death, rape, sexual abuse, or kidnapping of any person.

13                   (ii) If the act was committed against the will of  
14 the child, then forcible compulsion has been used.

15                   (B) The age, developmental stage, and stature of the  
16 victim and the relationship of the victim to the assailant, as well as the  
17 threat of deprivation of affection, rights, and privileges from the victim by  
18 the assailant, shall be considered in weighing the sufficiency of the  
19 evidence to prove forcible compulsion;

20           (10) “Guardian” means any person, agency, or institution, as  
21 defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so  
22 appointed;

23           (11) “Indecent exposure” means the exposure by a person of the  
24 person’s sexual organs for the purpose of arousing or gratifying the sexual  
25 desire of the person or of any other person under circumstances in which the  
26 person knows the conduct is likely to cause affront or alarm;

27           (12) “Near fatality” means an act that, as certified by a  
28 physician, places the child in serious or critical condition;

29           (13)(A) “Neglect” means those acts or omissions of a parent,  
30 guardian, custodian, foster parent, or any person who is entrusted with the  
31 child’s care by a parent, custodian, guardian, or foster parent, including,  
32 but not limited to, an agent or employee of a public or private residential  
33 home, child care facility, public or private school, or any person legally  
34 responsible under state law for the child’s welfare, but excluding the spouse  
35 of a minor and the parents of the married minor, which constitute:

36                   (i) Failure or refusal to prevent the abuse of the

1 child when the person knows or has reasonable cause to know the child is or  
2 has been abused;

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

9 (iii) Failure to take reasonable action to protect  
10 the child from abandonment, abuse, sexual abuse, sexual exploitation,  
11 neglect, or parental unfitness when the existence of the condition was known  
12 or should have been known;

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

17 (v) Failure to provide for the child's care and  
18 maintenance, proper or necessary support, or medical, surgical, or other  
19 necessary care;

20 (vi) Failure, although able, to assume  
21 responsibility for the care and custody of the child or to participate in a  
22 plan to assume such responsibility; or

23 (vii) Failure to appropriately supervise the child  
24 that results in the child's being left alone at an inappropriate age or in  
25 inappropriate circumstances creating a dangerous situation or a situation  
26 that puts the child at risk of harm.

27 (B)(i) "Neglect" shall also include:

28 (a) Causing a child to be born with an illegal  
29 substance present in the child's bodily fluids or bodily substances as a  
30 result of the pregnant mother's knowingly using an illegal substance before  
31 the birth of the child; or

32 (b) At the time of the birth of a child, the  
33 presence of an illegal substance in the mother's bodily fluids or bodily  
34 substances as a result of the pregnant mother's knowingly using an illegal  
35 substance before the birth of the child.

36 (ii) As used in this subdivision (12)(B), "illegal

1 substance” means a drug that is prohibited to be used or possessed without a  
2 prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

3 (iii) A test of the child’s bodily fluids or bodily  
4 substances may be used as evidence to establish neglect under subdivision  
5 (12)(B)(i)(a) of this section.

6 (iv) A test of the mother’s bodily fluids or bodily  
7 substances may be used as evidence to establish neglect under subdivision  
8 (12)(B)(i)(b) of this section;

9 (14) “Parent” means a biological mother, an adoptive parent, or  
10 a man to whom the biological mother was married at the time of conception or  
11 birth or who has been found by a court of competent jurisdiction to be the  
12 biological father of the child;

13 (15) “Pornography” means:

14 (A) Pictures, movies, or videos that lack serious  
15 literary, artistic, political, or scientific value and that, when taken as a  
16 whole and applying contemporary community standards, would appear to the  
17 average person to appeal to the prurient interest;

18 (B) Material that depicts sexual conduct in a patently  
19 offensive manner lacking serious literary, artistic, political, or scientific  
20 value; or

21 (C) Obscene or licentious material;

22 (16) “Serious bodily injury” means bodily injury that involves  
23 substantial risk of death, extreme physical pain, protracted and obvious  
24 disfigurement, or protracted loss or impairment of the function of a bodily  
25 member, organ, or mental faculty;

26 (17) “Severe maltreatment” means sexual abuse, sexual  
27 exploitation, acts or omissions which may or do result in death, abuse  
28 involving the use of a deadly weapon as defined by § 5-1-102, bone fracture,  
29 internal injuries, burns, immersions, suffocation, abandonment, medical  
30 diagnosis of failure to thrive, or causing a substantial and observable  
31 change in the behavior or demeanor of the child;

32 (18) “Sexual abuse” means:

33 (A) By a person ten (10) years of age or older to a person  
34 younger than eighteen (18) years of age:

35 (i) Sexual intercourse, deviate sexual activity, or  
36 sexual contact by forcible compulsion;



1                   (ii) Attempted sexual intercourse, deviate sexual  
 2 activity, or sexual contact by forcible compulsion;

3                   (iii) Indecent exposure; or

4                   (iv) Forcing the watching of pornography or live  
 5 sexual activity;

6                   (B) By a person eighteen (18) years of age or older to a  
 7 person not his or her spouse who is younger than sixteen (16) years of age:

8                   (i) Sexual intercourse, deviate sexual activity, or  
 9 sexual contact; or

10                   (ii) Attempted sexual intercourse, deviate sexual  
 11 activity, or sexual contact;

12                   (C) By a caretaker to a person younger than eighteen (18)  
 13 years of age:

14                   (i) Sexual intercourse, deviate sexual activity, or  
 15 sexual contact; or

16                   (ii) Attempted sexual intercourse, deviate sexual  
 17 activity, or sexual contact;

18                   (iii) Forcing or encouraging the watching of  
 19 pornography;

20                   (iv) Forcing, permitting, or encouraging the  
 21 watching of live sexual activity;

22                   (v) Forcing the listening to a phone sex line; or

23                   (vi) An act of voyeurism; or

24                   (D) By a person younger than ten (10) years of age to a  
 25 person younger than eighteen (18) years of age:

26                   (i) Sexual intercourse, deviate sexual activity, or  
 27 sexual contact by forcible compulsion; or

28                   (ii) Attempted sexual intercourse, deviate sexual  
 29 activity, or sexual contact by forcible compulsion;

30                   (19)(A)(i) "Sexual contact" means any act of sexual gratification  
 31 involving:

32                   (a) The touching, directly or through  
 33 clothing, of the sex organs, buttocks, or anus of a person or the breast of a  
 34 female;

35                   (b) The encouraging of a child to touch the  
 36 offender in a sexual manner; or

1 (c) The offender requesting to touch a child  
 2 in a sexual manner.

3 (ii) Evidence of sexual gratification may be  
 4 inferred from the attendant circumstances surrounding the specific complaint  
 5 of child maltreatment.

6 (B) However, nothing in this section shall permit normal  
 7 affectionate hugging to be construed as sexual contact;

8 (20) "Sexual exploitation" means:

9 (A) Allowing, permitting, or encouraging participation or  
 10 depiction of the child in:

11 (i) Prostitution;

12 (ii) Obscene photography;

13 (iii) Obscene filming; or

14 (B) Obscenely depicting, obscenely posing, or obscenely  
 15 posturing a child for any use or purpose;

16 (21) "Subject of the report" means:

17 (A) The offender;

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

20 (C) The child who is the subject of suspected  
 21 maltreatment; and

22 (22) "Underaged juvenile aggressor" means any child younger than  
 23 ten (10) years of age for whom a report of sexual abuse has been determined  
 24 to be true for sexual abuse to another child.

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

28  
 29 12-18-104. Confidentiality.

30 Any data, records, reports, or documents that are created, collected,  
 31 or compiled by or on behalf of the Department of Human Services, the  
 32 Department of Arkansas State Police, or other entity authorized under this  
 33 chapter to perform investigations or provide services to children,  
 34 individuals, or families shall not be subject to disclosure under the Freedom  
 35 of Information Act of 1967, § 25-19-101 et seq.

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12-18-105. Rules.

The Director of the Department of Human Services shall promulgate rules to implement this chapter.

12-18-106. Cooperative agreements.

(a) The Director of the Department of Human Services shall implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by a prosecuting attorney pertaining to a law enforcement or prosecuting attorney's investigation by initiating formal cooperative agreements with:

- (1) Law enforcement agencies;
- (2) Prosecuting attorneys; and
- (3) Other appropriate agencies and individuals.

(b) The director may enter into cooperative agreements with other states to create a national child maltreatment registration system.

12-18-107. Liability.

(a) A person or agency required by this chapter to report suspected child maltreatment who acts in good faith in making notification, the taking of a photograph or radiological test, or the removal of a child while exercising a seventy-two hour hold is immune to suit and to civil and criminal liability.

(b) If acting in good faith, a person making notification not named in this section is immune from liability.

(c) A publicly supported school, facility, or institution acting in good faith by cooperating with the investigative agency under this chapter shall be immune from civil and criminal liability.

Subchapter 2  
Offenses and Penalties.

12-18-201. Failure to notify by a mandated reporter in the first degree.

(a) A person commits the offense of failure to notify by a mandated reporter in the first degree if he or she:

1           (1) Is a mandated reporter under this chapter;

2           (2) Has:

3                   (A) Reasonable cause to suspect that a child has been  
4 subjected to child maltreatment;

5                   (B) Reasonable cause to suspect that a child has died as a  
6 result of child maltreatment; or

7                   (C) Observes a child being subjected to conditions or  
8 circumstances that would reasonably result in child maltreatment; and

9                   (3) Knowingly fails to notify the Child Abuse Hotline of the  
10 child maltreatment or suspected child maltreatment.

11           (b) Failure to notify by a mandated reporter in the first degree is a  
12 Class A misdemeanor.

13  
14           12-18-202. Failure to notify by a mandated reporter in the second  
15 degree.

16           (a) A person commits the offense of failure to notify by a mandated  
17 reporter in the second degree if he or she:

18                   (1) Is mandated reporter under this chapter;

19                   (2) Has:

20                   (A) Reasonable cause to suspect that a child has been  
21 subjected to child maltreatment;

22                   (B) Reasonable cause to suspect that a child has died as a  
23 result of child maltreatment; or

24                   (C) Observes a child being subjected to conditions or  
25 circumstances that would reasonably result in child maltreatment; and

26                   (3) Recklessly fails to notify the Child Abuse Hotline of the  
27 child maltreatment or suspected child maltreatment.

28           (b) Failure to notify by a mandated reporter in the second degree is a  
29 Class C misdemeanor.

30  
31           12-18-203. Making a false report under this chapter.

32           (a) A person commits the offense of making a false report under this  
33 chapter if he or she purposely makes a report containing a false allegation  
34 to the Child Abuse Hotline knowing the allegation to be false.

35           (b)(1) A first offense of making a false report under this chapter is  
36 a Class A misdemeanor.

1           (2) A subsequent offense of making a false report under this  
 2 chapter is a Class D felony.

3  
 4           12-18-204. Unlawful restriction of child abuse reporting.

5           (a)(1) A person commits the offense of unlawful restriction of child  
 6 abuse reporting if he or she:

7                   (A) Prohibits a mandated reporter under this chapter from  
 8 making a report of child maltreatment or suspected child maltreatment to the  
 9 Child Abuse Hotline; or

10                   (B) Requires that a mandated reporter under this chapter  
 11 receive permission from the person before the mandated reporter makes a  
 12 report of child maltreatment or suspected child maltreatment to the Child  
 13 Abuse Hotline; or

14                   (C) Knowingly retaliates against a mandated reporter under  
 15 this chapter for reporting child maltreatment or suspected child maltreatment  
 16 to the Child Abuse Hotline.

17           (2) Nothing in this section shall prohibit any person or  
 18 institution from requiring a mandatory reporter employed or serving as a  
 19 volunteer for a person or institution to inform a representative of that  
 20 person or institution that the reporter has made a report to the Child Abuse  
 21 Hotline.

22           (b) Unlawful restriction of child abuse reporting is a Class A  
 23 misdemeanor.

24  
 25           12-18-205. Unlawful disclosure of data or information under this  
 26 chapter.

27           (a) A person commits the offense of unlawful disclosure of data or  
 28 information under this chapter if the person knowingly discloses data or  
 29 information to a person to whom disclosure is not permitted by this chapter.

30           (b) Unlawful disclosure of data or information under this chapter is a  
 31 Class A misdemeanor.

32  
 33           12-18-206. Civil liability for failure to report.

34           A person required by this chapter to make a report of child  
 35 maltreatment or suspected child maltreatment to the Child Abuse Hotline who  
 36 purposely fails to do so is civilly liable for damages proximately caused by

1 that failure.

2  
3 12-18-207. Judicial and prosecutorial disclosure.

4 A judge or prosecuting attorney who fails to make a report when  
5 required by this chapter is immune from criminal and civil liability under  
6 this chapter.

7  
8 12-18-208. Subsequent disclosure by a subject of a report.

9 This chapter does not prevent subsequent disclosure by a subject of the  
10 report.

11  
12 12-18-209. Unlawful disclosure of data or information.

13 The Department of Human Services or a prosecuting attorney may file a  
14 petition in the appropriate court seeking imposition of penalties for  
15 violation of this chapter.

16  
17 Subchapter 3.

18 Child Abuse Hotline.

19  
20 12-18-301. Creation.

21 (a) There is created the Child Abuse Hotline.

22 (b) The Child Abuse Hotline is a unit established within the  
23 Department of Human Services or its designee with the purpose of receiving  
24 and recording notifications and reports under this chapter.

25 (c)(1) The Child Abuse Hotline shall be staffed twenty-four (24) hours  
26 per day and shall have statewide accessibility through a toll-free telephone  
27 number.

28 (2) The toll-free telephone number under this section shall be  
29 known as the "Child Abuse Hotline".

30 (d) All persons whether a mandated reporter under this chapter or not  
31 may use the Child Abuse Hotline to report child maltreatment or suspected  
32 child maltreatment.

33  
34 12-18-302. Mandated reporters.

35 (a) As prescribed under this section, a mandated reporter under this  
36 chapter may report child maltreatment or suspected child maltreatment by

1 telephone call, facsimile transmission, or online reporting.

2 (b) Facsimile transmission and online reporting may be used in  
3 nonemergency situations by an identified mandated reporter under this chapter  
4 who provides the following contact information:

5 (1) Name and phone number; and

6 (2) In the case of online reporting, the email address of the  
7 identified mandated reporter under this chapter.

8 (c) The Child Abuse Hotline shall provide confirmation of the receipt  
9 of a facsimile transmission via a return facsimile transmission or via online  
10 receipt.

11 (d) A mandated reporter under this chapter who wishes to remain  
12 anonymous shall make a report through the Child Abuse Hotline toll-free  
13 telephone system.

14  
15 12-18-303. Minimum requirements for a report to be accepted.

16 (a) Except as otherwise provided in this section, the Child Abuse  
17 Hotline shall accept a report of child maltreatment or suspected child  
18 maltreatment if:

19 (1) The allegations, if true, would constitute child  
20 maltreatment as defined under this chapter;

21 (2) Sufficient identifying information is provided to identify  
22 and locate the child or the child's family; and

23 (3) The child or the child's family is present in Arkansas or  
24 the incident occurred in Arkansas.

25 (b) If the alleged offender resides in another state and the incident  
26 occurred in another state or country, the Child Abuse Hotline shall screen  
27 out the report, transfer the report to the Child Abuse Hotline of the state  
28 or country where the alleged offender resides or the incident occurred, and,  
29 if child protection is an issue, forward the screened out report to the  
30 Department of Human Services.

31 (c) If the incident occurred in Arkansas and the victim, offender, or  
32 victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall  
33 accept the report and the Arkansas investigating agency shall contact the  
34 other state and request assistance in completing the investigation, including  
35 an interview with the out-of-state subject of the report.

36 (d)(1) If the Child Abuse Hotline receives a report and the alleged

1 offender is a resident of the State of Arkansas and the report of child  
2 maltreatment or suspected child maltreatment in the state or country in which  
3 the act occurred would also be child maltreatment in Arkansas at the time the  
4 incident occurred, the Child Abuse Hotline shall refer the report to the  
5 appropriate investigating agency within the state so that the Arkansas  
6 investigative agency can investigate, alone or in concert with, the  
7 investigative agency of any other state or country that may be involved.

8 (2) The Arkansas investigating agency shall make an  
9 investigative determination and shall provide notice to the alleged offender  
10 that, if the allegation is determined to be true, the offender's name will be  
11 placed in the Child Maltreatment Central Registry.

12 (3) The other state may also conduct an investigation in this  
13 state that results in the offender's being named in a true report in that  
14 state and placed in the Child Maltreatment Central Registry of that state.

15  
16 12-18-304. Qualifying reports of certain types of physical abuse.

17 (a)(1) The Child Abuse Hotline shall accept a report of physical abuse  
18 if any of the following intentional or knowing acts are alleged to occur:

19 (A) Throwing, kicking, burning, biting, or cutting a  
20 child;

21 (B) Striking a child with a closed fist;

22 (C) Shaking a child four (4) years of age or older; or

23 (D) Striking a child seven (7) years of age or older on  
24 the face or on the head.

25 (2) A report under this subsection shall not be determined to be  
26 true unless the child suffered an injury as the result of the act.

27 (b) The Child Abuse Hotline shall accept a report of physical abuse if  
28 any of the following intentional or knowing acts are alleged to occur:

29 (1) Shaking a child three (3) years of age or younger;

30 (2) Striking a child six (6) years of age or younger on the face  
31 or on the head;

32 (3) Interfering with a child's breathing; or

33 (4) Pinching, biting, or striking a child in the genital area.

34 (c)(1) The Child Abuse Hotline shall accept a report of physical abuse  
35 if a child suffers an injury as the result of a restraint.

36 (2) The report shall be determined not to be true if the injury



1 is a minor temporary mark or causes transient pain and was an acceptable  
 2 restraint as provided under this chapter.

3 (d)(1) The Child Abuse Hotline shall accept a report of physical abuse  
 4 involving a bruise to a child even if at the time of the report the bruise is  
 5 not visible if the bruising occurred:

6 (A) Within the past fourteen (14) days; and

7 (B) As a result of physical abuse as described under  
 8 subsections (a)-(c) of this section.

9 (2) However, the report under this subsection shall not be  
 10 determined to be true unless the existence of the bruise is corroborated.

11  
 12 12-18-305. Garrett's Law reports.

13 The Child Abuse Hotline shall accept a report of neglect as defined  
 14 under § 12-18-103(13)(B) only if the reporter is one (1) of the following  
 15 mandated reporters and the mandated reporter has reasonable cause to suspect  
 16 that a child has been subjected to neglect as defined under § 12-18-  
 17 103(13)(B):

18 (1) A licensed nurse;

19 (2) Any medical personnel who may be engaged in the admission,  
 20 examination, care, or treatment of persons;

21 (3) An osteopath;

22 (4) A physician;

23 (5) A resident intern;

24 (6) A surgeon; or

25 (7) A social worker in a hospital.

26  
 27 12-18-306. Reports naming an adult as the victim.

28 The Child Abuse Hotline shall accept a report of sexual abuse, sexual  
 29 contact, or sexual exploitation naming an adult as the victim only if:

30 (1) The alleged offender is a caretaker of a child; and

31 (2) The person making the report is one (1) of the following:

32 (A) The adult victim;

33 (B) A law enforcement officer;

34 (C) The adult victim's counselor or therapist;

35 (D) The alleged offender's counselor or therapist; or

36 (E) The alleged offender.

1  
 2 12-18-307. Reports alleging Munchausen’s syndrome by proxy or  
 3 factitious illness.

4 The Child Abuse Hotline shall accept a report of child maltreatment  
 5 alleging Munchausen’s syndrome by proxy or factitious illness only if the  
 6 reporter is a medical professional or the report comes from a person employed  
 7 at a medical facility.

8  
 9 12-18-308. Reports of injury to a child’s intellectual, emotional, or  
 10 psychological development.

11 The child maltreatment hotline shall accept a report of injury to a  
 12 child’s intellectual, emotional, or psychological development as evidenced by  
 13 observable and substantial impairment of the child’s ability to function  
 14 within the child’s normal range of performance and behavior only if the  
 15 reporter is:

- 16 (1) A medical or mental health professional;
- 17 (2) A teacher; or
- 18 (3) A day care center worker.

19  
 20 12-18-309. Reports alleging that a child is dependent-neglected.

21 The Child Abuse Hotline shall accept telephone calls or other  
 22 communications alleging that a child is dependent-neglected, as defined in §  
 23 9-27-303(17), and shall immediately refer this information to the Department  
 24 of Human Services.

25  
 26 Subchapter 4

27 Reporting Suspected Child Maltreatment.

28  
 29 12-18-401. Generally.

30 A person may immediately notify the Child Abuse Hotline if he or she:

- 31 (1) Has reasonable cause to suspect that:
  - 32 (A) Child maltreatment has occurred; or
  - 33 (B) A child has died as a result of child maltreatment;

34 or

35 (2) Observes a child being subjected to conditions or  
 36 circumstances that would reasonably result in child maltreatment.

1  
2 12-18-402. Mandated reporters.

3 (a) An individual listed as a mandated reporter under subsection (b)  
4 of this section shall immediately notify the Child Abuse Hotline if he or  
5 she:

6 (1) Has reasonable cause to suspect that a child has:

7 (A) Been subjected to child maltreatment; or

8 (B) Died as a result of child maltreatment; or

9 (2) Observes a child being subjected to conditions or  
10 circumstances that would reasonably result in child maltreatment.

11 (b) The following individuals are mandated reporters under this  
12 chapter:

13 (1) A child care worker or foster care worker;

14 (2) A coroner;

15 (3) A day care center worker;

16 (4) A dentist;

17 (5) A dental hygienist;

18 (6) A domestic abuse advocate;

19 (7) A domestic violence shelter employee;

20 (8) A domestic violence shelter volunteer;

21 (9) An employee of the Department of Human Services;

22 (10) An employee working under contract for the Division of  
23 Youth Services of the Department of Human Services;

24 (11) A foster parent;

25 (12) A judge;

26 (13) A law enforcement official;

27 (14) A licensed nurse;

28 (15) Medical personnel who may be engaged in the admission,  
29 examination, care, or treatment of persons;

30 (16) A mental health professional;

31 (17) An osteopath;

32 (18) A peace officer;

33 (19) A physician;

34 (20) A prosecuting attorney;

35 (21) A resident intern;

36 (22) A school counselor;

1           (23) A school official;  
 2           (24) A social worker;  
 3           (25) A surgeon;  
 4           (26) A teacher;  
 5           (27) A court-appointed special advocate program staff member or  
 6 volunteer;

7           (28) A juvenile intake or probation officer;  
 8           (29) A clergy member, which includes a minister, priest, rabbi,  
 9 accredited Christian Science practitioner, or other similar functionary of a  
 10 religious organization, or an individual reasonably believed to be so by the  
 11 person consulting him or her, except to the extent the clergy member:

12                   (A) Has acquired knowledge of suspected child maltreatment  
 13 through communications required to be kept confidential pursuant to the  
 14 religious discipline of the relevant denomination or faith; or

15                   (B) Received the knowledge of the suspected child  
 16 maltreatment from the alleged offender in the context of a statement of  
 17 admission;

18           (30) An employee of a child advocacy center or a child safety  
 19 center; or

20           (31) An attorney ad litem in the course of his or her duties as  
 21 an attorney ad litem.

22           (c)(1) A privilege or contract shall not prevent a person from  
 23 reporting child maltreatment when he or she is a mandated reporter and  
 24 required to report under this section.

25           (2) A school, Head Start program, or day care facility shall not  
 26 prohibit an employee or a volunteer from directly reporting child  
 27 maltreatment to the Child Abuse Hotline.

28           (3) A school, Head Start program, or day care facility shall not  
 29 require an employee or a volunteer to obtain permission or notify any person,  
 30 including an employee or a supervisor, before reporting child maltreatment to  
 31 the Child Abuse Hotline.

32

33   Subchapter 5

34           Notice Procedures after a Report of Suspected Child Maltreatment has  
 35 been made.

36

1       12-18-501. Notice of a report to the Child Abuse Hotline.

2       Notice of a report to the Child Abuse Hotline is confidential and may  
3 be disclosed only as provided in this chapter.

4  
5       12-18-502. Release and disclosure of data generally.

6       (a)(1) The Department of Human Services shall not release data that  
7 would identify the person who made the report to the Child Abuse Hotline  
8 unless a court of competent jurisdiction orders release of the information  
9 after the court has reviewed in camera the record related to the report and  
10 has found it has reason to believe that the reporter knowingly made a false  
11 report.

12               (2) However, upon request, the information shall be disclosed to  
13 the prosecuting attorney or law enforcement.

14       (b)(1) A person or agency to whom disclosure is made shall not  
15 disclose to any other person a report or other information obtained pursuant  
16 to this section.

17               (2) However, the person or agency is permitted to consult his or  
18 her own attorney regarding the information in any notice provided by the  
19 department.

20  
21       12-18-503. Notification generally.

22       (a) The Department of Human Services shall notify the following of any  
23 report of child maltreatment within five (5) business days:

24               (1) The legal parents, legal guardians, and current foster  
25 parent of a child in foster care who is named as a victim or alleged  
26 offender;

27               (2) The attorney ad litem for any child named as the victim or  
28 alleged offender;

29               (3) A person appointed by the court as the Court Appointed  
30 Special Advocate volunteer for any child named as the victim or alleged  
31 offender;

32               (4) Counsel in a dependency-neglect case or family in need of  
33 services case when the child named as a victim or alleged offender;

34               (5) The attorney ad litem and Court Appointed Special Advocate  
35 volunteer for all other children in the same foster home if the child  
36 maltreatment occurred in a foster home;

1           (6) The attorney ad litem and Court Appointed Special Advocate  
2 for any child in foster care when the alleged juvenile offender or underaged  
3 juvenile aggressor is placed in the same placement as the attorney ad litem  
4 or Court Appointed Special Advocates' client; and

5           (7) The appropriate multi-disciplinary team.

6  
7           12-18-504. Notification in cases of reports of severe maltreatment.

8           (a) The Department of Human Services shall immediately notify local  
9 law enforcement of all reports of severe maltreatment.

10           (b)(1) Notification of a report of child maltreatment shall be provided  
11 within five (5) business days to the prosecuting attorney on an allegation of  
12 severe maltreatment.

13           (2) The prosecuting attorney may provide written notice to the  
14 department that the department does not need to provide notification of the  
15 initial child maltreatment report to the prosecuting attorney's office.

16           (3) Upon receiving the notification, the department shall not be  
17 required to provide notification of the initial child maltreatment report to  
18 the prosecuting attorney's office.

19  
20           12-18-505. Notification to the child's school.

21           The Department of Human Services shall notify the child's school if the  
22 department takes a seventy-two hour hold on the child or if the court awards  
23 the department custody of the child.

24  
25           12-18-506. Notice when the alleged offender works with children or is  
26 engaged in child-related activities.

27           (a) If the Child Abuse Hotline receives a report naming as an alleged  
28 offender a person who is engaged in child-related activities or employment  
29 and the Department of Human Services has determined that children under the  
30 care of the alleged offender appear to be at risk of maltreatment by the  
31 alleged offender, the department may notify the following of the report made  
32 to the Child Abuse Hotline:

33           (1) The alleged offender's employer;

34           (2) The school superintendent, principal, or a person in an  
35 equivalent position where the alleged offender is employed;

36           (3) The person in charge of a paid or volunteer activity; and

1           (4) The appropriate licensing or registering authority to the  
 2 extent necessary to carry out its official responsibilities.

3           (b) The department shall promulgate rules that will ensure that  
 4 notification required under this subsection is specifically approved by a  
 5 responsible manager in the department before the notification is made.

6           (c) If the department, based on information gathered during the course  
 7 of the investigation, determines that there is no preponderance of the  
 8 evidence indicating that children under the care of the alleged offender  
 9 appear to be at risk, the department shall immediately notify the previously  
 10 notified person or entity of that information.

11  
 12           12-18-507. Notice when the alleged victim is a resident of a facility  
 13 licensed, registered, or operated by the state.

14           (a) If the Child Abuse Hotline receives a report that a client or a  
 15 resident of a facility licensed or registered by the State of Arkansas has  
 16 been subjected to child maltreatment while at the facility, the Department of  
 17 Human Services shall immediately notify the facility director and the  
 18 facility's licensing or registering authority of the Child Abuse Hotline's  
 19 receipt of a report of suspected child maltreatment.

20           (b) If the Child Abuse Hotline receives a report that a client or a  
 21 resident of a facility operated by the department or a facility operated  
 22 under contract with the department has been subjected to child maltreatment  
 23 while at the facility, the department shall immediately notify the  
 24 appropriate division director and the facility director of the Child Abuse  
 25 Hotline's receipt of initial report of suspected child maltreatment.

26  
 27                                   Subchapter 6  
 28                                   Investigative Proceedings.

29  
 30           12-18-601. Assignment to investigative agency.

31           (a) When a person, agency, corporation, or partnership then providing  
 32 substitute care for any child in the custody of the Department of Human  
 33 Services or a Department of Human Services employee or employee's spouse or  
 34 other person residing in the home is reported as being suspected of child  
 35 maltreatment, the investigation shall be conducted pursuant to procedures  
 36 established by the Department of Human Services.

1       (b) The procedures described in subsection (a) of this section shall  
2 include referral of allegations to the Department of Arkansas State Police  
3 and any other appropriate law enforcement agency if the allegation involves  
4 severe maltreatment.

5       (c) Upon referral, the Department of Arkansas State Police shall  
6 investigate the allegations.

7       (d)(1) The Department of Human Services may develop and implement  
8 triage procedures for screening out reports of child maltreatment of a child  
9 not at risk of imminent harm if an appropriate referral is made to a  
10 community organization or voluntary preventive service.

11       (2) The Department of Human Services shall not implement this  
12 section until rules necessary to carry out this subsection have been  
13 promulgated pursuant to the Administrative Procedures Act, § 25-15-201 et  
14 seq.

15  
16       12-18-602. Initiation of the investigation.

17       (a)(1) The Department of Human Services shall cause an investigation  
18 to be made upon receiving initial notification of suspected child  
19 maltreatment.

20       (b)(1) All investigations shall begin within seventy-two (72) hours.

21       (2) However, the investigation shall begin within twenty-four  
22 (24) hours if:

23               (A) The allegation is severe maltreatment, excluding an  
24 allegation of sexual abuse if the most recent allegation of sexual abuse was  
25 more than one (1) year ago and the alleged victim does not currently have  
26 contact with the alleged offender; or

27               (B) The allegation is that a child has been subjected to  
28 neglect as defined in § 12-18-103(13)(B).

29       (c) At the initial time of contact with the alleged offender, the  
30 person conducting the investigation shall advise the alleged offender of the  
31 allegations made against the alleged offender in a manner that is consistent  
32 with the laws protecting the rights of the person who made the report.

33       (d) Upon initiation of the investigation, the primary focus of the  
34 investigation shall be whether or not the alleged offender has access to  
35 children and whether or not children are at risk such that children need to  
36 be protected.



1  
2 12-18-603. Accompaniment by law enforcement.

3 Upon request, law enforcement shall accompany a person conducting an  
4 investigation required by this chapter.

5  
6 12-18-604. Services during the investigation.

7 The Department of Human Services shall have the authority to make  
8 referrals or provide services during the course of the child maltreatment  
9 investigation.

10  
11 12-18-605. Investigation procedure generally.

12 (a) An investigation of child maltreatment or suspected child  
13 maltreatment under this chapter shall include interviews with:

14 (1) The child as provided under subsection (b) of this section;

15 (2) The parents, both custodial and noncustodial;

16 (3) If neither parent is the alleged offender, the alleged  
17 offender; and

18 (4) Any other relevant persons.

19 (b) If, after exercising reasonable diligence in conducting any or all  
20 interviews, the subjects of the interviews cannot be located or are unable to  
21 communicate, the efforts to conduct the interviews shall be documented and  
22 the investigation shall proceed under this chapter.

23  
24 12-18-606. When the alleged offender is a family member or lives in  
25 the home with the alleged victim.

26 If the alleged offender is a family member or lives in the home with  
27 the alleged victim, an investigation under this chapter shall seek to  
28 ascertain:

29 (1) The existence, cause, nature, and extent of the child  
30 maltreatment;

31 (2) The existence and extent of previous injuries;

32 (3) The identity of the person responsible for the child  
33 maltreatment;

34 (4) The names and conditions of other children in the home;

35 (5) The circumstances of the parents or caretakers of the child;

36 (6) The environment where the child resides;

1           (7) The relationship of the child or children with the parents  
2 or caretakers; and

3           (8) All other pertinent data.

4  
5           12-18-607. When the alleged offender is not a family member or not  
6 living in the home with the alleged victim.

7           If the alleged offender is not a family member nor living in the home  
8 with the alleged victim, the investigation under this chapter shall seek to  
9 ascertain:

10           (1) The existence, cause, nature, and extent of child  
11 maltreatment;

12           (2) The identity of the person responsible for the child  
13 maltreatment;

14           (3) The existence and extent of previous child maltreatment  
15 perpetrated by the alleged offender;

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

19           (5) If the report is determined to be true and is a report of  
20 sexual abuse, sexual contact, or sexual exploitation, an assessment of any  
21 other children previously or currently under the care of the alleged  
22 offender, to the extent practical, and whether these children have been  
23 maltreated or are at risk of maltreatment; and

24           (6) All other pertinent and relevant data.

25  
26           12-18-608. Interview of the alleged child victim.

27           (a) A person conducting an investigation of a child victim under this  
28 chapter shall have the discretion:

29           (1) In the child's best interest to limit the persons allowed to  
30 be present when a child is being interviewed concerning allegations of child  
31 maltreatment; and

32           (2) As it relates to the integrity of the investigation to limit  
33 persons present during an interview.

34           (b)(1) The interview with the child victim shall be conducted separate  
35 and apart from the alleged offender or any representative or attorney for the  
36 alleged offender.

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

4  
5           12-18-609. Right to enter for the purposes of the investigation.

6           (a) A person conducting an investigation under this chapter shall have  
7 the right to enter into or upon a home, school, or any other place for the  
8 purpose of conducting the investigation and interviewing or completing the  
9 investigation.

10           (b)(1) A publicly supported school, facility, or institution shall not  
11 deny access to any person conducting a child maltreatment investigation under  
12 this chapter.

13           (2) Failure to comply with this section may subject the publicly  
14 supported school, facility, or institution to a contempt sanction and  
15 reimbursement of attorney's fees.

16           (c)(1) If necessary access or admission is denied to a person  
17 conducting an investigation under this chapter, the Department of Human  
18 Services may petition the proper juvenile division of circuit court for an ex  
19 parte order of investigation requiring the parent, caretaker, or persons  
20 denying access to any place where the child may be to allow entrance for the  
21 interviews, examinations, and investigations.

22           (2) However, upon application to the court by the parents,  
23 caretaker, or persons denying access to the child showing good cause, the  
24 court may issue a written order to stay the order of investigation pending a  
25 hearing to be held within seventy-two (72) hours.

26  
27           12-18-610. Access to the child's school records.

28           A person conducting an investigation under this chapter shall be  
29 allowed access to the child's public and private school records during the  
30 course of the child maltreatment investigation.

31  
32           12-18-611. Inspection of personnel and volunteer records.

33           A person conducting an investigation required by this chapter shall  
34 have the right to inspect personnel records of employees and volunteers in  
35 any place where an allegation of child maltreatment has been reported as  
36 having occurred at that place but the alleged offender is unknown.

1  
2 12-18-612. Criminal background check.

3 (a) The person conducting an investigation under this chapter shall  
4 have the right to obtain a criminal background check, including a  
5 fingerprint-based check in any national crime information database, on any  
6 subject of the report.

7 (b) The results of the criminal background check shall not be  
8 disclosed outside of the Department of Human Services except as permitted  
9 under this chapter.

10  
11 12-18-613. Access to miscellaneous records.

12 Upon request by a person conducting an investigation under this  
13 chapter, a school, day care center, child care facility, residential  
14 facility, residential treatment facility, or similar institution shall  
15 provide the person conducting the investigation with:

16 (1) The name, date of birth, social security number, and last  
17 known address and phone number of any person identified as an alleged  
18 offender if the alleged child maltreatment occurred at that school, center,  
19 or facility; and

20 (2) The name and address of any witness to the alleged child  
21 maltreatment if the alleged child maltreatment occurred at that school,  
22 center, or facility.

23  
24 12-18-614. Submission to a physical exam or other testing.

25 An investigation under this chapter may include a physical examination,  
26 a drug test, radiology procedures, photographs, and a psychological or  
27 psychiatric examination of all children subject to the care, custody, or  
28 control of the alleged offender.

29  
30 12-18-615. Radiology procedures, photographs, and medical records.

31 (a) A person who is required to make a report under this chapter may  
32 take or cause to be taken radiology procedures and photographs or compile  
33 medical records that may be relevant as to the existence or extent of child  
34 maltreatment.

35 (b) A hospital or clinic may make videotapes that may be relevant as  
36 to the existence or extent of child maltreatment.

1       (c) The Department of Human Services or law enforcement officials  
2 shall be provided at no cost a copy of the results of radiology procedures,  
3 videotapes, photographs, or medical records upon request.

4  
5       12-18-616. Timing.

6       (a)(1) Except as otherwise provided in this section, an investigative  
7 determination shall be made in each investigation under this chapter within  
8 thirty (30) days regardless of whether the investigation is conducted by the  
9 Department of Human Services, the Crimes Against Children Division of the  
10 Department of Arkansas State Police, or local law enforcement.

11       (2) However, this procedural requirement shall not be considered  
12 as a factor to alter the investigative determination in any judicial or  
13 administrative proceeding.

14       (b) An investigation involving an out-of-home alleged offender that is  
15 determined to be true may be extended up to thirty (30) additional days to  
16 allow an investigator to ascertain:

17       (1) The names and conditions of any children of the alleged  
18 offender;

19       (2) Whether children of the alleged offender have been  
20 maltreated or are at risk of maltreatment; and

21       (3) To the extent practicable, whether children previously or  
22 currently under the care of the alleged offender have been sexually abused or  
23 are at risk of sexual abuse.

24       (c) An investigation shall not be transferred to inactive status  
25 because an investigator is awaiting documentary evidence.

26  
27       12-18-617. Authority to pursue other remedies.

28       (a) Notwithstanding an investigative determination finding of true but  
29 exempted the Department of Human Services may pursue:

30       (1) Any legal remedies, including the authority to initiate  
31 legal proceedings in a court of competent jurisdiction; and

32       (2) Medical care or treatment for a child when such care or  
33 treatment is necessary to prevent or remedy serious harm to the child or to  
34 prevent the withholding of medically indicated treatment from a child with  
35 life-threatening conditions.

36       (b) Except with respect to the withholding of medically indicated

1 treatments from a disabled infant with life-threatening conditions, case-by-  
2 case determinations concerning the exercise of authority in this section  
3 shall be within the sole discretion of the department.

4  
5 12-18-618. Religious bias prohibited.

6 The Department of Human Services shall investigate all allegations of  
7 child maltreatment without regard to the parent's practice of his or her  
8 religious beliefs and shall only consider whether the acts or omissions of  
9 the parent constitute child maltreatment under this chapter.

10  
11 12-18-619. Closing investigations.

12 (a) If at any time before or during an investigation under this  
13 chapter it is determined that the alleged offender is not a caretaker of any  
14 child and the alleged victim has reached eighteen (18) years of age prior to  
15 notification, the child maltreatment investigation shall be closed  
16 notwithstanding any criminal investigation.

17 (b)(1) If at any time before or during the investigation it appears  
18 that the alleged offender is identified and is not a caretaker of the victim  
19 child, excluding investigations of sexual abuse, the Department of Human  
20 Services shall:

21 (A) Refer the matter to the appropriate law enforcement  
22 agency;

23 (B) Close its investigation; and

24 (C) Forward a copy of its findings to the appropriate law  
25 enforcement agency for the agency's further use in any criminal  
26 investigation.

27 (2)(A) If the appropriate law enforcement agency subsequently  
28 determines that the alleged offender is a caretaker, it shall immediately  
29 notify the department of its determination.

30 (B) Thereupon the department shall reopen and continue its  
31 investigation in compliance with all other requirements contained in this  
32 chapter.

33 (c) If at any time before or during the investigation the department  
34 is unable to locate or identify the alleged offender because the alleged  
35 child maltreatment occurred more than five (5) years ago or in another state,  
36 the department shall consider the report unable to be completed and place the

1 report in inactive status.

2  
3 12-18-620. Release of information on pending investigation.

4 (a) Information on a pending investigation under this chapter is  
5 confidential and may be disclosed only as provided in this chapter.

6 (b)(1) The Department of Human Services shall not release data that  
7 would identify a person who made a report under this chapter unless a court  
8 of competent jurisdiction orders release of the information after the court  
9 has reviewed in camera the record related to the report and has found it has  
10 reason to believe that the reporter knowingly made a false report.

11 (2) However, upon request, the information shall be disclosed to  
12 the prosecuting attorney or law enforcement.

13 (c)(1) Any person or agency to whom disclosure is made shall not  
14 disclose to any other person any information obtained pursuant to this  
15 section.

16 (2) However, the person or agency is permitted to consult his or  
17 her own attorney regarding the information in any notice provided by the  
18 department.

19 (d) The department may provide information, including protected health  
20 information, to a person or agency that provides services such as medical  
21 examination of, an assessment interview with, or diagnosis of, care for,  
22 treatment of, or supervision of a victim of maltreatment, a juvenile  
23 offender, or an underaged juvenile aggressor.

24 (e) Information on a pending investigation, including protected health  
25 information, shall be released upon request to:

26 (1) The Department of Human Services;

27 (2) Law enforcement;

28 (3) The prosecuting attorney;

29 (4) The appropriate multidisciplinary team;

30 (5) Attorney ad litem of the alleged victim or offender;

31 (6) Court Appointed Special Advocate of the alleged victim or  
32 offender;

33 (7) Any licensing or registering authority to the extent  
34 necessary to carry out its official responsibilities;

35 (8) Any department division director or facility director  
36 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

1           (9) Any facility director receiving notice of a Child Abuse  
2 Hotline report pursuant to this chapter; and

3           (10)(A) Acting in their official capacities, individual United  
4 States and Arkansas senators and representatives and their authorized staff  
5 members but only if they agree not to permit any re-disclosure of the  
6 information.

7           (B) However, disclosure shall not be made to any committee  
8 or legislative body.

9           (f) Information on a pending investigation, including protected health  
10 information, may be released to or disclosed in a circuit court child custody  
11 case or similar case if:

12           (1) No seventy-two-hour hold has been exercised under this  
13 chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, §  
14 9-27-301 et seq.;

15           (2) Written notice of intent to request release or disclosure is  
16 provided to the investigating agency at least five (5) days before the date  
17 for release or disclosure;

18           (3) The investigating agency has the opportunity to appear  
19 before the court and be heard on the issue of release or disclosure;

20           (4) The information gathered by the investigative agency is  
21 necessary for the determination of an issue before the court;

22           (5) Waiting until completion of the investigation will  
23 jeopardize the health or safety of the child in the custody case;

24           (6) A protective order is issued to prevent re-disclosure of the  
25 information provided by the investigating agency or the information is  
26 released or disclosed only to the court in camera; and

27           (7) Release or disclosure of the information will not compromise  
28 a criminal investigation.

29           (g) Information on a pending investigation, including protected health  
30 information, may be released to or disclosed in the circuit court if the  
31 victim or alleged offender has an open dependency-neglect or family in need  
32 of services case before the circuit court.

33  
34   Subchapter 7  
35   Investigative Findings.  
36



1 12-18-701. Generally.

2 (a) The agency responsible for an investigation under this chapter  
3 shall make a complete written report of the investigation by the conclusion  
4 of a period of thirty (30) days.

5 (b) The report of the investigation shall include the following  
6 information:

7 (1) The names and addresses of the child and his or her legal  
8 parents and other caretakers of the child, if known;

9 (2) The child's age, sex, and race;

10 (3) The nature and extent of the child's present and past  
11 injuries;

12 (4) The investigative determination;

13 (5) The nature and extent of the child maltreatment, including  
14 any evidence of previous injuries or child maltreatment to the child or his  
15 or her siblings;

16 (6) The name and address of the person responsible for the  
17 injuries or child maltreatment if known;

18 (7) Services offered and accepted;

19 (8) Family composition;

20 (9) The source of the notification; and

21 (10) The person making the notification, his or her occupation,  
22 and where he or she can be reached.

23 (c) The agency responsible for the investigation shall immediately  
24 provide the Department of Human Services at no cost a copy of the written  
25 report and any information gathered during the course of the investigation,  
26 including statements from witnesses and transcripts of interviews.

27 (d) All information gathered during the course of the investigation  
28 shall be contained in the file of the Department of Human Services whether or  
29 not the information supports the investigative determination.

30 (e)(1) The department shall not release data that would identify the  
31 person who made the report unless a court of competent jurisdiction orders  
32 release of the information after the court has reviewed in camera the record  
33 related to the report and has found it has reason to believe that the  
34 reporter knowingly made a false report.

35 (2) However, the information shall be disclosed to the  
36 prosecuting attorney or law enforcement officers on request.

1       (f) The report, exclusive of information identifying the person making  
2 the notification, shall be admissible in evidence in any proceeding related  
3 to child maltreatment.

4       (g) Notwithstanding any provision of the Arkansas Rules of Evidence,  
5 any privilege between a minister and any person confessing to or being  
6 counseled by the minister shall not constitute grounds for excluding evidence  
7 at any dependency-neglect proceeding or proceedings involving custody of a  
8 child.

9  
10       12-18-702. Investigative determination.

11       Upon completion of an investigation under this chapter, the Department  
12 of Human Services shall determine whether the allegations of child  
13 maltreatment are:

14               (1)(A) Unsubstantiated.

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

17               (2)(A) True.

18                       (B) A true determination shall be entered when the  
19 allegation is supported by a preponderance of the evidence.

20                       (C) A determination of true but exempted, which means that  
21 the offender's name shall not be placed in the central registry, shall be  
22 entered if:

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

28                               (ii) The offender is an underaged juvenile  
29 aggressor; or

30                               (iii) The report was true for neglect as defined  
31 under § 12-18-103(13)(B); or

32               (3)(A) Inactive.

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

35  
36       12-18-703. Notice generally.

1       (a) The Department of Human Services shall notify each alleged  
2 offender of the child maltreatment investigative determination whether true  
3 or unsubstantiated.

4       (b) In every case in which a report is determined to be true, the  
5 department shall notify the alleged offender of the investigative  
6 determination by certified mail, restricted delivery or by process server.

7  
8       12-18-704. Notice if the alleged offender is under 10 years of age.

9       (a) If the report was determined true and the alleged offender is a  
10 child under ten (10) years of age at the time the act or omission occurred,  
11 the Department of Human Services shall notify the legal parents and legal  
12 guardians of the investigative determination and that the child's name shall  
13 not be placed in the Child Maltreatment Central Registry.

14  
15       12-18-705. Notice if the alleged offender is 10 years of age or  
16 older.

17       (a) If the report was determined true and the alleged offender is a  
18 child ten (10) years of age or older at the time the act or omission occurred  
19 a notice shall be given as provided in this section.

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

21           (1) If the child is in foster care, the Department of Human  
22 Services shall notify the child's counsel and the legal parents, legal  
23 guardians, and current foster parents of the alleged offender; or

24           (2) If the child is not in foster care, the department shall  
25 notify the legal parents and legal guardians of the alleged offender.

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

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

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

32           (3) The potential consequences to the alleged juvenile offender  
33 if the juvenile offender's name is placed in the Child Maltreatment Central  
34 Registry;

35           (4) A statement that the person has a right to have an attorney,  
36 and if the person cannot afford an attorney, to contact Legal Services;

1           (5) A statement that if the person's name is placed on the Child  
2 Maltreatment Central Registry, that the person's name may be automatically  
3 removed after one (1) year or the person may be able to petition for removal  
4 after five (5) years, depending on the finding;

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

10           (7) The name of the person making the notification to the  
11 alleged juvenile offender, his or her title or position, and current contact  
12 information.

13  
14           12-18-706. Notice if the alleged offender is 18 years of age or  
15 older.

16           Notification to an alleged offender who was eighteen (18) years of age  
17 or older at the time of the act or omission that resulted in a true finding  
18 of child maltreatment shall include the following:

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

21           (2) A statement that the person named as the alleged offender of  
22 the true report may request an administrative hearing;

23           (3) A statement that the request must be made to the department  
24 within thirty (30) days of receipt of the service or certified mailing of the  
25 notice of determination;

26           (4) The potential consequences to the person if the person's  
27 name is placed on the Child Maltreatment Central Registry;

28           (5) A statement that the person has a right to have an attorney  
29 and that if the person can't afford an attorney to contact Legal Services;

30           (6) A statement that if the person's name is placed on the Child  
31 Maltreatment Central Registry that the person's name may be automatically  
32 removed after one (1) year or the person may be able to petition for removal  
33 after five (5) years, depending on the finding;

34           (7) The name of the person making the notification to the  
35 alleged juvenile offender, his or her title or position, and current contact  
36 information; and

1           (8) A statement that the administrative hearing may take place  
 2 in person if requested by the alleged offender or the alleged offender's  
 3 attorney within thirty (30) days from the date that the alleged offender  
 4 receives notification under this section.

5  
 6           12-18-707. Notice when the alleged offender works with children or is  
 7 engaged in child-related activities.

8           (a) If the child maltreatment investigative determination names as an  
 9 alleged offender a person who is engaged in child-related activities or  
 10 employment and the Department of Human Services has determined that children  
 11 under the care of the alleged offender appear to be at risk of maltreatment  
 12 by the alleged offender, the department may notify the following of the  
 13 investigative determination:

- 14           (1) An alleged offender's employer;
- 15           (2) A school superintendent, principal, or a person in an  
 16 equivalent position where the alleged offender is employed;
- 17           (3) A person in charge of a paid or volunteer activity; and
- 18           (4) Any licensing or registering authority to the extent  
 19 necessary to carry out its official responsibilities.

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

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

27  
 28           12-18-708. Miscellaneous notice requirements.

29           (a) Notification of an investigative determination under this chapter  
 30 shall be provided to:

- 31           (1) The appropriate multi-disciplinary team;
- 32           (2) The circuit court judge if the victim or offender has an  
 33 open dependency-neglect or family in need of services case;
- 34           (3) The attorney ad litem for any child who is named as the  
 35 victim or offender;
- 36           (4) The Court Appointed Special Advocate for any child named as

1 the alleged victim or offender;

2 (5) Any licensing or registering authority to the extent  
3 necessary to carry out its official responsibilities;

4 (6) Any department division director or facility director  
5 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

6 (7) Any facility director receiving notice of a Child Abuse  
7 Hotline report pursuant to this chapter;

8 (8) The legal parents, legal guardians and current foster  
9 parents of any child in foster care named as an alleged victim; and

10 (9) The Attorney ad litem and Court Appointed Special Advocate  
11 volunteer of all other children in the same foster home if the child  
12 maltreatment occurred in a foster home.

13 (b) If the investigative determination is unsubstantiated, the  
14 Department of Human Services shall notify the mandated reporter who made the  
15 underlying report.

16 (c) If the investigative determination is true, notification of the  
17 investigative determination shall be provided to the school where the victim  
18 child is enrolled. However, the name of the alleged offender shall not be  
19 identified.

20  
21 12-18-709. Confidentiality.

22 (a) Notice of an investigative determination under this chapter is  
23 confidential and may be disclosed only as provided in this chapter.

24 (b)(1) The Department of Human Services shall not release data that  
25 would identify the person who made the report unless a court of competent  
26 jurisdiction orders release of the information after the court has reviewed,  
27 in camera, the record related to the report and has found it has reason to  
28 believe that the reporter knowingly made a false report.

29 (2) However, upon request, the information shall be disclosed to  
30 the prosecuting attorney or law enforcement.

31 (c)(1) Any person or agency to whom disclosure is made shall not  
32 disclose to any other person a report or other information obtained pursuant  
33 to this section.

34 (2) However, the person or agency is permitted to consult his or  
35 her own attorney regarding the information in any notice provided by the  
36 department.

1           (d)(1) Notification of the investigative determination of severe  
2 maltreatment shall be provided to the appropriate law enforcement agency and  
3 the prosecuting attorney.

4           (2) The prosecuting attorney and law enforcement may provide  
5 written notice to the department that the department does not need to provide  
6 notice of investigative determinations.

7           (3) Upon receiving the notification, the department shall not be  
8 required to provide notification of the investigative determination.

9           (e) The department shall notify each subject of the report of the  
10 investigative determination whether true or unsubstantiated.

11  
12           12-18-710. Release of information on true investigative determination  
13 pending due process

14           (a) Information on a completed true investigation pending due process  
15 as referenced in this chapter is confidential and may be disclosed only as  
16 provided in this chapter.

17           (b)(1) The Department of Human Services shall not release data that  
18 would identify the person who made the report unless a court of competent  
19 jurisdiction orders release of the information after the court has reviewed  
20 in camera the record related to the report and has found it has reason to  
21 believe that the reporter knowingly made a false report.

22           (2) However, upon request, the information shall be disclosed to  
23 the prosecuting attorney or law enforcement.

24           (c)(1) Any person or agency to whom disclosure is made shall not  
25 disclose to any other person any information obtained pursuant to this  
26 section.

27           (2) However, the person or agency is permitted to consult his or  
28 her own attorney regarding the information in any notice provided by the  
29 department.

30           (d) The department may provide information, including protected health  
31 information, to a person or agency that provides services such as medical  
32 examination of, an assessment interview with, or diagnosis of, care for,  
33 treatment of, or supervision of a victim of maltreatment, a juvenile  
34 offender, or an underaged juvenile aggressor.

35           (e) Information on a completed investigation, including protected  
36 health information, pending due process shall be released upon request to:

- 1           (1) The alleged offender;  
2           (2) The department;  
3           (3) Law enforcement;  
4           (4) The prosecuting attorney;  
5           (5) The appropriate multidisciplinary team;  
6           (6) Attorney ad litem for the victim or offender;  
7           (7) Court Appointed Special Advocate for the victim or offender;  
8           (8) Any licensing or registering authority to the extent  
9 necessary to carry out its official responsibilities;  
10           (9) Any department division director or facility director  
11 receiving notice of a Child Abuse Hotline report pursuant to this chapter;  
12           (10) Any facility director receiving notice of a Child Abuse  
13 Hotline report pursuant to this chapter; and  
14           (11)(i) Acting in their official capacities, individual United  
15 States and Arkansas senators and representatives and their authorized staff  
16 members but only if they agree not to permit any re-disclosure of the  
17 information.  
18                           (ii) However, disclosure shall not be made to any  
19 committee or legislative body.  
20           (f) Information on a true investigative determination, including  
21 protected health information, may be released to or disclosed in a circuit  
22 court child custody case or similar case if:  
23           (1) No seventy-two-hour hold has been exercised under this  
24 chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, §  
25 9-27-301 et seq.;  
26           (2) Written notice of intent to request release or disclosure is  
27 provided to the investigating agency at least five (5) days before the date  
28 for release or disclosure;  
29           (3) The investigating agency has the opportunity to appear  
30 before the court and be heard on the issue of release or disclosure;  
31           (4) The information gathered by the investigative agency is  
32 necessary for the determination of an issue before the court;  
33           (5) Waiting until completion of due process will jeopardize the  
34 health or safety of the child in the custody case;  
35           (6) A protective order is issued to prevent redisclosure of the  
36 information provided by the investigating agency or the information is



1 released or disclosed only to the court in camera; and

2 (7) Release or disclosure of the information will not compromise  
3 a criminal investigation.

4 (g) Information on true investigative determination, including  
5 protected health information, may be released to or disclosed in the circuit  
6 court if the victim or offender has an open dependency-neglect or family in  
7 need of services case before the circuit court.

8  
9 12-18-711. Fee for copying investigative file.

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

12 (1) A reasonable fee not to exceed ten dollars (\$10.00) for  
13 researching, copying, and mailing records of an investigative file under this  
14 chapter; and

15 (2) A reasonable fee for reproducing copies of tapes and  
16 photographs.

17 (b) A fee shall not be charged to:

18 (1) A nonprofit or volunteer agency that requests searches of  
19 the investigative files; or

20 (2) A person who is indigent.

21  
22 Subchapter 8

23 Administrative Hearings.

24  
25 12-18-801. Time to complete administrative hearing.

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

31 (B) However, delays in completing the administrative  
32 hearing that are attributable to the petitioner shall not count against the  
33 limit of one hundred eighty (180) days.

34 (2)(A) If an order is entered overturning the investigating  
35 agency's investigative determination of true because of the failure to  
36 complete the administrative hearing process within one hundred eighty (180)

1 days, the Department of Human Services shall report any failures to comply  
2 with this subsection for each quarter to the House Interim Committee on  
3 Aging, Children and Youth, Legislative and Military Affairs and the Senate  
4 Interim Committee on Children and Youth.

5 (B) The quarterly report to the House Interim Committee on  
6 Aging, Children and Youth, Legislative and Military Affairs and the Senate  
7 Interim Committee on Children and Youth shall include a written explanation  
8 of the failure of the department.

9 (b)(1) The limit of one hundred eighty (180) days for an  
10 administrative hearing under this chapter shall not apply if there is an  
11 ongoing criminal or delinquency investigation or criminal or delinquency  
12 charges have been filed or will be filed regarding the occurrence that is the  
13 subject of the child maltreatment report.

14 (2) In a case described under subdivision (b)(1) of this  
15 section, the administrative hearing shall be stayed pending final disposition  
16 of the criminal or delinquency proceedings.

17 (3) It shall be the duty of the petitioner to report the final  
18 disposition of the criminal or delinquency proceeding to the department.

19 (4) Each report shall include a file-marked copy of the criminal  
20 or delinquency disposition.

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

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

32  
33 12-18-802. Subpoenas – Form.

34 (a) When the Department of Human Services conducts an administrative  
35 hearing, the chief counsel of the department may require the attendance of  
36 witnesses and the production of books, records, or other documents through

1 the issuance of subpoenas when that testimony or information is necessary to  
2 adequately present the position of the department, the investigating agency,  
3 or the alleged offender.

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

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

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

12 “The State of Arkansas to the Sheriff of \_\_\_\_\_ County: You  
13 are commanded to subpoena (name) \_\_\_\_\_, (address)  
14 , to attend a proceeding before the Department of Human Services to be held  
15 at on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_ m., and testify and/or  
16 produce the following books, records, or other documents, to wit:  
17 in a matter of (style of proceeding)

18 \_\_\_\_\_ to be conducted under the authority  
19 of \_\_\_\_\_ . WITNESS my hand this \_\_\_\_\_ day of  
20 \_\_\_\_\_, 20 \_\_\_\_\_ .

21 \_\_\_\_\_  
22 Chief Counsel or designee, Department of Human  
23 Services”

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

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

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

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

1 of the subpoena.

2  
3 12-18-803. Privileged communications as evidence – Exception.

4 (a) It is the public policy of the State of Arkansas to protect the  
5 health, safety, and the welfare of children within the state.

6 (b) No privilege, except that between a lawyer and client or between a  
7 minister, including a Christian Science practitioner, and a person confessing  
8 to or being counseled by the minister, shall prevent anyone from testifying  
9 concerning child maltreatment.

10 (c) When a physician, psychologist, psychiatrist, or licensed  
11 counselor or therapist conducts interviews with or provides therapy to a  
12 subject of a report of suspected child maltreatment for purposes related to  
13 child maltreatment, the physician, psychologist, psychiatrist, or licensed  
14 counselor or therapist is deemed to be performing services on behalf of the  
15 child.

16 (d) An adult subject of a report of suspected child maltreatment  
17 cannot invoke privilege on the child’s behalf.

18  
19 12-18-804. Defenses and affirmative defenses.

20 For any act or omission of child maltreatment that would be a criminal  
21 offense or an act of delinquency, any defense or affirmative defense that  
22 would be applicable to the criminal offense or delinquent act is also  
23 cognizable in a child maltreatment proceeding.

24  
25 12-18-805. Video teleconferencing and teleconferencing options.

26 (a)(1) An administrative law judge may conduct an administrative  
27 hearing under this chapter by video teleconference in lieu of an in-person  
28 hearing.

29 (2) If neither party requests that the administrative hearing be  
30 conducted in person, the administrative hearing shall be conducted  
31 telephonically.

32 (b) If any party requests an in-person administrative hearing within  
33 thirty (30) days from the date that the party receives notification, the in-  
34 person administrative hearing shall be conducted in an office of the  
35 Department of Human Services nearest to the petitioner’s residence unless the  
36 administrative law judge notifies the parties that the administrative hearing

1 will be conducted via video teleconference.

2 (c)(1) The Office of Appeals and Hearings of the Department of Human  
3 Services shall designate the sites to be used for video teleconference  
4 administrative hearings.

5 (2) The office shall designate sites within ten (10) miles of  
6 the following cities:

- 7 (A) Arkadelphia;
- 8 (B) Booneville;
- 9 (C) Conway;
- 10 (D) Fayetteville;
- 11 (E) Jonesboro;
- 12 (F) Little Rock; and
- 13 (G) Warren.

14 (3) The office may designate additional sites for video  
15 teleconference administrative hearings.

16 (4) A site for a video teleconference administrative hearing  
17 shall include the location designated by the office that is nearest to the  
18 petitioner's residence.

19 (5) The administrative law judge and other parties may agree to  
20 appear at the location designated by the office or at any other designated  
21 administrative hearing locations that are convenient to them.

22  
23 12-18-806. Continuances.

24 (a)(1) An administrative law judge shall grant a continuance if the  
25 record under this chapter tendered by the Department of Human Services to the  
26 alleged offender is determined by the administrative law judge to be  
27 incomplete.

28 (2) The administrative law judge shall direct the department to  
29 make diligent inquiry and obtain the missing information to supplement the  
30 record if:

- 31 (A) The department receives further information;
- 32 (B) The alleged offender gives notice of the existence of  
33 further information; or
- 34 (C) The department examines the record and determines that  
35 additional information exists.

36 (3) If additional information is found to exist, the record

1 shall be supplemented, and the department shall provide a copy of the  
 2 supplemented record to the alleged offender.

3 (b) At least ten (10) days prior to the administrative hearing, the  
 4 alleged offender and the department shall share any information with the  
 5 other party that the party intends to introduce into evidence at the  
 6 administrative hearing that is not contained in the record.

7 (c) If a party fails to timely share information, the administrative  
 8 law judge shall:

9 (1) Grant a continuance;

10 (2) Allow the record to remain open for submission of rebuttal  
 11 evidence; or

12 (3) Reject the information as not relevant to the incident of  
 13 child maltreatment.

14 (d) Any time accrued during the continuance or allowing the record to  
 15 remain open shall not be counted in the one-hundred-eighty-day time period to  
 16 complete the administrative hearing.

17  
 18 12-18-807. Administrative judgments and adjudications.

19 (a) A certified copy of a judgment or an adjudication from a court of  
 20 competent jurisdiction dealing with the same subject matter as an issue  
 21 concerned in an administrative hearing under this chapter shall be filed with  
 22 the Office of Appeals and Hearings of the Department of Human Services.

23 (b)(1) A decision on any identical issue shall be rendered without an  
 24 administrative hearing and shall be consistent with the judgment or  
 25 adjudication.

26 (2) However, if the judgment or adjudication of the court is  
 27 reversed or vacated and notice of the reversal or vacation is provided to the  
 28 department, the Department of Human Services shall set the matter for an  
 29 administrative hearing.

30  
 31 12-18-808. Notice of juvenile division circuit court proceedings.

32 (a) The Department of Human Services shall notify the administrative  
 33 law judge and the petitioner of the status of any juvenile division of  
 34 circuit court proceeding involving the victim if child maltreatment at issue  
 35 in the administrative hearing proceeding is also an issue in the juvenile  
 36 division of circuit court proceeding.

1       (b) Notice from the department under this section shall also include  
2 whether the department exercised a seventy-two-hour hold on the victim and  
3 released the child or if the department or division of circuit court  
4 dismissed a petition for emergency custody or dependency-neglect.

5  
6       12-18-809. Confidentiality.

7       (a) An administrative hearing decision under this chapter and all  
8 exhibits submitted at the hearing are confidential and shall remain  
9 confidential upon the filing of an appeal with a circuit court or an  
10 appellate court.

11       (b) An administrative hearing decision under this chapter that upholds  
12 the agency investigative determination of true may be used or disclosed only  
13 as provided in this chapter.

14       (c) An administrative hearing decision under this chapter that  
15 overturns the agency investigative determination of true may be used or  
16 disclosed only as provided in this chapter.

17  
18       12-18-810. Authority to amend investigative determinations based on  
19 evidence.

20       (a) An administrative law judge may amend an investigative  
21 determination to conform with the evidence presented.

22       (b)(1) If the alleged offender could not reasonably infer the amended  
23 investigative determination from the investigative record and information  
24 submitted by the Department of Human Services, the administrative law judge  
25 shall, upon request, grant a continuance to the alleged offender.

26       (2) However, an amendment of the investigative determination any  
27 shall not be done after the conclusion of the hearing.

28  
29       12-18-811. Expedited administrative hearings.

30       (a)(1) If an alleged offender timely requests an administrative  
31 hearing, the Department of Human Services may request that the administrative  
32 hearing be expedited if the alleged offender is engaged in child-related  
33 activities or employment or the alleged offender is employed or a volunteer  
34 with persons with disabilities, persons with mental illnesses, or elderly  
35 persons.

36       (2) The alleged offender shall have five (5) days from date of

1 receipt of the request for an expedited administrative hearing to object to  
2 any request to expedite the administrative hearing.

3 (b) The expedited administrative hearing shall be granted if any of  
4 the following are at risk because of the alleged offender's employment or  
5 volunteer activities:

6 (1) Children;

7 (2) The elderly; or

8 (3) Persons with disabilities or mental illnesses.

9 (c) If the administrative hearing is expedited, the department shall  
10 immediately make the investigative file available to the alleged offender.

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

12 (A) A reasonable fee not to exceed ten dollars (\$10.00)  
13 for researching, copying, and mailing records of the investigative file; and

14 (B) A reasonable fee for reproducing copies of tapes and  
15 photographs.

16 (2) A fee shall not be charged to a person who is indigent.

17 (e)(1) Unless waived by the alleged offender, the expedited  
18 administrative hearing process shall not be held until at least thirty (30)  
19 days have elapsed after the investigative file is made available to the  
20 alleged offender.

21 (2) As used in this section, "made available" means notification  
22 to the offender or his or her attorney that a copy of the investigative  
23 record is available for pick up at the department office in the county in  
24 which the alleged offender resides or in the department office in the county  
25 designated by the alleged offender or his or her attorney.

26  
27 12-18-812. Preliminary administrative hearing.

28 (a) If the Department of Human Services is unable to notify an  
29 offender of an investigative determination under this chapter, the department  
30 may request a preliminary administrative hearing to allow provisional  
31 placement of the offender's name in the Child Maltreatment Central Registry.

32 (b) The department must prove that the department diligently attempted  
33 to notify the alleged offender of the investigative determination,  
34 specifically, that the department used a reasonable degree of care to  
35 ascertain the offender's whereabouts and notify the offender.

36 (c) The department shall notify the administrative law judge of any



1 criminal action related to the investigation.

2 (d) At the preliminary administrative hearing, the administrative law  
3 judge shall determine whether a prima facie case exists that:

4 (1) The offender committed child maltreatment, that is, whether  
5 a preponderance of the evidence supports a finding that the allegations are  
6 true; and

7 (2) A child, elderly person, person with a disability, or a  
8 person with mental illness may be at risk of harm.

9 (e) If the administrative law judge determines there is not a prima  
10 facie case, the department shall not at that time place the alleged  
11 offender's name in the Child Maltreatment Central Registry but may continue  
12 to provide notice to the alleged offender for a regular administrative  
13 hearing.

14 (f) If the administrative law judge determines there is a prima facie  
15 case, the administrative law judge shall direct that the offender's name  
16 shall be provisionally placed in the Child Maltreatment Central Registry.

17 (g)(1) If an offender's name is provisionally placed in the Child  
18 Maltreatment Central Registry the alleged offender may request a regular  
19 administrative hearing within thirty (30) days of receipt of the notice of  
20 the investigative determination.

21 (2) Failure to timely request a regular administrative hearing  
22 shall result in a finding by the administrative law judge that the  
23 provisional designation shall be removed and the offender's name shall be  
24 officially placed in the Child Maltreatment Central Registry.

25  
26 12-18-813. Notice of investigative determination upon satisfaction of  
27 due process.

28 (a)(1) Due process has been satisfied when:

29 (A) The alleged offender eighteen (18) years of age or  
30 older at the time the act or omission occurred was provided written notice of  
31 the true investigative determination as required by this chapter but failed  
32 to timely request an administrative hearing;

33 (B) The alleged offender eighteen (18) years of age or  
34 older at the time the act or omission occurred timely requested an  
35 administrative hearing and a decision has been issued by the administrative  
36 law judge; or

1                   (C) The alleged offender was a child at the time the act  
2 or omission occurred and the child or his or her legal parent or legal  
3 guardian waived the administrative hearing or the administrative law judge  
4 issued a decision.

5                   (2) Upon satisfaction of due process, if the investigative  
6 determination is true, the alleged offender's name shall be placed in the  
7 Child Maltreatment Central Registry.

8                   (b) If the person or agency making the initial notification of  
9 suspected child maltreatment is a mandated reporter, the Department of Human  
10 Services shall provide to the mandated reporter the following information:

11                   (1) The investigative determination; and

12                   (2) Services offered and provided.

13                   (c)(1) Upon satisfaction of due process and if the investigative  
14 determination is true, the department shall provide the local educational  
15 agency, specifically the school counselor at the school the maltreated child  
16 attends, a report including the name and relationship of the offender to the  
17 maltreated child and the services offered or provided by the department to  
18 the child.

19                   (2) Upon completion of due process, the department shall provide  
20 the local educational agency, specifically the school counselor at the school  
21 the maltreated child attends, a report indicating the department's true  
22 investigative determination on any child age ten (10) or older who is named  
23 as the offender in a true report and the services offered or provided by the  
24 department to the juvenile offender.

25                   (3) Any local educational agency receiving information under  
26 this section from the department shall make this information, if it is a true  
27 report, confidential and a part of the child's permanent educational record  
28 and shall treat information under this section as educational records are  
29 treated under the Family Educational Rights and Privacy Act, 20 U.S.C. §  
30 1232g.

31                   (d)(1) Upon satisfaction of due process and if the investigative  
32 determination is true, if the offender is engaged in child-related activities  
33 or employment and the department has determined that children under the care  
34 of the offender appear to be at risk of maltreatment by the offender, the  
35 department may notify the following of the investigative determination:

36                   (A) The offender's employer;

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

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

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

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

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

14                   (e) Upon satisfaction of due process, if the victim or offender is in  
15 foster care, notification of the investigative determination shall be  
16 provided to:

17                   (1) The legal parents, legal guardians, and current foster  
18 parents of the victim; and

19                   (2) The attorney ad litem and Court Appointed Special Advocate  
20 volunteer of any other children in the same foster home if the maltreatment  
21 occurred in the foster home.

22                   (f) Upon satisfaction of due process, notification of the  
23 investigative determination shall be provided to the following:

24                   (1) All subjects of the report;

25                   (2) The juvenile division of circuit court if the child has an  
26 open dependency-neglect or family in need of services case and the child was  
27 named as a victim or offender;

28                   (3) The attorney ad litem;

29                   (4) Any person appointed by the court as the Court Appointed  
30 Special Advocate volunteer;

31                   (5) The appropriate multidisciplinary team;

32                   (6) A Child Safety Center if involved in the investigation;

33                   (7) Law Enforcement;

34                   (8) The prosecuting attorney in cases of severe maltreatment;

35                   (9) Any licensing or registering authority to the extent  
36 necessary to carry out its official responsibilities;

1           (10) Any department division director or facility director  
 2 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

3           (11) Any facility director receiving notice of a Child Abuse  
 4 Hotline report pursuant to this chapter; and

5           (12) As required by § 21-15-110, the employer of any offender if  
 6 the offender is in a designated position with a state agency.

7  
 8                                   Subchapter 9

9                                   Child Maltreatment Central Registry.

10  
 11           12-18-901. Creation.

12           There is established within the Department of Human Services a  
 13 statewide Child Maltreatment Central Registry.

14  
 15           12-18-902. Contents.

16           The Child Maltreatment Central Registry shall contain records of cases  
 17 on all true investigative determinations of child maltreatment.

18  
 19           12-18-903. Placement in the central registry.

20           An offender's name shall be placed in the Child Maltreatment Central  
 21 Registry if:

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

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

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

30                   (4) Upon completion of the administrative hearing process, the  
 31 department's investigative determination of true is upheld.

32  
 33           12-18-904. Central registry generally.

34           An offender's name shall remain in the Child Maltreatment Central  
 35 Registry unless:

36                   (1) The name is removed pursuant to this chapter or another

1 statute;

2 (2) The name is removed under a rule;

3 (3) The name was provisionally placed in the Child Maltreatment  
4 Central Registry and the alleged offender subsequently prevails at an  
5 administrative hearing; or

6 (4) The offender prevails upon appeal.

7  
8 12-18-905. Provisional placement in the central registry.

9 If an alleged offender's name is provisionally placed in the Child  
10 Maltreatment Central Registry, any disclosure by the Child Maltreatment  
11 Central Registry shall include the notation that the name has only been  
12 provisionally placed in the Child Maltreatment Central Registry.

13  
14 12-18-906. Allegations determined to be unsubstantiated not to be  
15 included.

16 Records of all cases in which allegations are determined to be  
17 unsubstantiated shall not be included in the Child Maltreatment Central  
18 Registry.

19  
20 12-18-907. Rules.

21 The Department of Human Services may adopt rules as may be necessary to  
22 encourage cooperation with other states in exchanging true reports and to  
23 effect a national registration system.

24  
25 12-18-908. Removal of Name from the Child Maltreatment Central  
26 Registry.

27 (a) If an adult offender is found guilty of, pleads guilty to, or  
28 pleads nolo contendere to an act that is the same act for which the offender  
29 is named in the Child Maltreatment Central Registry regardless of any  
30 subsequent expungement of the offense from the offender's criminal record,  
31 the offender shall always remain in the Child Maltreatment Central Registry  
32 unless the conviction is reversed or vacated.

33 (b)(1) The Department of Human Services shall identify in its policy  
34 and procedures manual the types of child maltreatment that shall  
35 automatically result in the removal of the name of an offender from the Child  
36 Maltreatment Central Registry.

1           (2) If an offender has been entered into the Child Maltreatment  
2 Central Registry as an offender for the named types of child maltreatment  
3 identified under subdivision (b)(1) of this section, the offender's name  
4 shall be removed from the Child Maltreatment Central Registry on reports of  
5 this type of child maltreatment if the offender has not had a subsequent true  
6 report of this type for one (1) year and more than one (1) year has passed  
7 since the closure of any protective services or foster care case opened as  
8 the result of this report.

9           (c)(1) The department shall identify in its policy and procedures  
10 manual the types of child maltreatment for which an offender can request that  
11 the offender's name be removed from the Child Maltreatment Central Registry.

12           (2) If an offender has been entered into the Child Maltreatment  
13 Central Registry as an offender for the named types of child maltreatment  
14 identified under subdivision (c)(1) of this section, the offender may  
15 petition the department requesting that the offender's name be removed from  
16 the Child Maltreatment Central Registry if the offender has not had a  
17 subsequent true report of this type for five (5) years and more than five (5)  
18 years have passed since the closure of any protective services or foster case  
19 opened as a result of this report.

20           (3) The department shall develop policy and procedures to assist  
21 it in determining whether to remove the offender's name from the Child  
22 Maltreatment Central Registry.

23           (d) Notwithstanding the provisions of this subchapter, with regard to  
24 an offender who was a child at the time of the act or omission that resulted  
25 in a true finding of child maltreatment, the department shall:

26           (1) Not remove the offender's name from the Child Maltreatment  
27 Central Registry if the offender was found guilty of, pleaded guilty to, or  
28 pleaded nolo contendere to a felony in circuit court as an adult for the act  
29 that is the same act for which the offender is named in the Child  
30 Maltreatment Central Registry unless the conviction is reversed or vacated;  
31 or

32           (2) Remove the offender's name from the Child Maltreatment  
33 Central Registry if:

34           (A) More than five (5) years have passed from the date of  
35 the act or omission that caused the true finding of child maltreatment and  
36 there have been no subsequent acts or omissions resulting in a true finding

1 of child maltreatment; and

2 (B) The offender can prove by a preponderance of the  
3 evidence that the juvenile offender has been rehabilitated.

4 (e)(1)(A) If the department denies the request for removal of the name  
5 from the Child Maltreatment Central Registry, the offender may request an  
6 administrative hearing within thirty (30) days from receipt of the  
7 department's decision.

8 (ii) The standard on review for the administrative  
9 hearing shall be whether the department abused its discretion.

10 (2)(A) At least ten (10) days prior to the administrative  
11 hearing, the alleged offender and the department shall share any information  
12 with the other party that the party intends to introduce into evidence at the  
13 administrative hearing that is not contained in the record.

14 (B) If a party fails to timely share information, the  
15 administrative law judge shall:

16 (i) Grant a continuance;

17 (ii) Allow the record to remain open for submission  
18 of rebuttal evidence; or

19 (iii) Reject the information as not relevant to the  
20 rehabilitation or the incident of child maltreatment.

21 (f) The Director of the Department of Human Services shall adopt rules  
22 necessary to carry out this chapter pursuant to the Arkansas Administrative  
23 Procedure Act, § 25-15-201 et seq., except that the director shall not begin  
24 the process under the Arkansas Administrative Procedure Act, § 25-15-201 et  
25 seq., until the proposed rules have been reviewed by the House Interim  
26 Committee on Aging, Children and Youth, Legislative and Military Affairs and  
27 the Senate Interim Committee on Children and Youth.

28  
29 12-18-909. Availability of true reports of child maltreatment from the  
30 central registry.

31 (a) True reports of child maltreatment are confidential and may be  
32 disclosed only as provided in this chapter.

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

34 (A) A reasonable fee not to exceed ten dollars (\$10.00)  
35 for researching, copying, and mailing records of the investigative files of  
36 child maltreatment cases; and

1                   (B) A reasonable fee for reproducing copies of tapes and  
2 photographs.

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

4                   (A) A nonprofit or volunteer agency that requests searches  
5 of the investigative files; or

6                   (B) A person who is indigent.

7                   (c)(1) The department shall not release data that would identify the  
8 person who made the report unless a court of competent jurisdiction orders  
9 release of the information after the court has reviewed in camera the record  
10 related to the report and has found it has reason to believe that the  
11 reporter knowingly made a false report.

12                   (2) However, upon request, the information shall be disclosed to  
13 the prosecuting attorney or law enforcement.

14                   (d)(1) Any person or agency to whom disclosure is made shall not  
15 disclose to any other person a report or other information obtained pursuant  
16 to this section.

17                   (2) However, the person or agency is permitted to consult his or  
18 her own attorney regarding information provided by the department.

19                   (3) However, a local educational agency or a school counselor  
20 shall forward all true reports of child maltreatment received from the  
21 department when a child transfers from one (1) local educational agency to  
22 another and shall notify the department of the child's new school and  
23 address, if known.

24                   (4) Nothing in this chapter shall be construed to prevent  
25 subsequent disclosure by the subject of the report.

26                   (e)(1) The department may provide information, including protected  
27 health information, to a person or agency that provides services such as  
28 medical examination of, an assessment interview with, or diagnosis of, care  
29 for, treatment of, or supervision of a victim of maltreatment, a juvenile  
30 offender, or an underaged juvenile aggressor.

31                   (2) This information may include:

32                   (A) The investigative determination or the investigation  
33 report; and

34                   (B) The services offered and provided.

35                   (f) If an alleged offender's name has been provisionally placed in the  
36 central registry, any disclosure by the central registry shall include the



1 notation that the name has only been provisionally placed in the central  
2 registry.

3 (g) A report made under this chapter that is determined to be true, as  
4 well as any other information obtained, including protected health  
5 information, and a report written or photograph or radiological procedure  
6 taken concerning a true report in the possession of the Department of Human  
7 Services shall be confidential and shall be made available only to:

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

11 (2) A federal, state, or local government entity, or any agent  
12 of the entity, having a need for the information in order to carry out its  
13 responsibilities under law to protect children from abuse or neglect;

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

15 (4) A civil or administrative proceeding connected with the  
16 administration of the Arkansas Child Welfare State Plan when the court or  
17 hearing officer determines that the information is necessary for the  
18 determination of an issue before the court or agency;

19 (5) An audit or similar activity conducted in connection with  
20 the administration of such a plan or program by any governmental agency that  
21 may by law conduct the audit or activity;

22 (6)(A) To a person, agency, or organization engaged in a bona  
23 fide research or evaluation project having value as determined by the  
24 department in future planning for programs for maltreated children or in  
25 developing policy directions.

26 (B) However, any confidential information provided for a  
27 research or evaluation project under this subdivision shall not be re-  
28 disclosed.

29 (C) However, if a research or evaluation project results  
30 in the publication of related material, confidential information provided for  
31 a research or evaluation project under this subdivision shall not be  
32 disclosed;

33 (7) A properly constituted authority, including  
34 multidisciplinary teams referenced in this chapter, investigating a report of  
35 known or suspected child abuse or neglect or providing services to a child or  
36 family that is the subject of a report;

1           (8)(A) The Division of Child Care and Early Childhood Education  
2 of the Department of Human Services and the child care facility owner or  
3 operator who requested the Child Maltreatment Central Registry information  
4 through a signed notarized release from an individual who is a volunteer,  
5 has applied for employment, is currently employed by a child care facility,  
6 or is the owner or operator of a child care facility.

7           (B) This disclosure shall be for the limited purpose of  
8 providing Child Maltreatment Central Registry background information and  
9 shall indicate a true finding only;

10          (9) Child abuse citizen panels described in the Child Abuse  
11 Prevention and Treatment Act, 42 U.S.C. § 5106a;

12          (10) Child fatality review panels as authorized by the  
13 department;

14          (11)(A) A grand jury or court upon a finding that information in  
15 the record is necessary for the determination of an issue before the court or  
16 grand jury; and

17          (B) The grand jury or court may disclose it to parties to  
18 a legal proceeding upon a finding that the report is necessary for the  
19 presentation of a party's complaint or defense and under such terms or  
20 protective order that the court orders;

21          (12) The current foster parents of a child who is a subject of a  
22 report;

23          (13)(A) Acting in their official capacities, individual United  
24 States and Arkansas senators and representatives and their authorized staff  
25 members but only if they agree not to permit any re-disclosure of the  
26 information.

27          (B) However, disclosure shall not be made to any committee  
28 or legislative body of any information that identifies any recipient of  
29 services by name or address;

30          (14) A Court Appointed Special Advocate upon presentation of an  
31 order of appointment for a child who is a subject of a report;

32          (15) The attorney ad litem of a child who is the subject of a  
33 report;

34          (16)(A) An employer or volunteer agency for purposes of  
35 screening an employee, applicant, or volunteer who is or will be engaged in  
36 employment or activity with children, the elderly, individuals with

1 disabilities, or individuals with mental illness upon submission of a signed,  
 2 notarized release from the employee, applicant, or volunteer.

3 (B) The registry shall release only the following  
 4 information on true reports to the employer or agency:

5 (i) That the employee, applicant, or volunteer has a  
 6 true report;

7 (ii) The date the investigation was completed; and

8 (iii) The type of true report;

9 (17) The Division of Developmental Disabilities Services and the  
 10 Division of Aging and Adult Services as to participants of the waiver  
 11 program;

12 (18) The Division of Child Care and Early Childhood Education of  
 13 the Department of Human Services for purposes of enforcement of licensing  
 14 laws and regulations;

15 (19) Any licensing or registering authority to the extent  
 16 necessary to carry out its official responsibilities;

17 (20) Any person or entity to whom notification was provided  
 18 under this chapter; and

19 (21) Any school superintendent, principal, or a person in an  
 20 equivalent position, or the Department of Education to the extent necessary  
 21 to carry out its responsibility to ensure that children are protected while  
 22 in the school environment or during off-campus school activities.

23  
 24 12-18-910. Availability of screened out and unsubstantiated reports.

25 (a) Screened out and unsubstantiated reports of child maltreatment are  
 26 confidential and may be disclosed only as provided in this chapter.

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

28 (A) A reasonable fee not to exceed ten dollars (\$10.00)  
 29 for researching, copying, and mailing records of the investigative files of  
 30 child maltreatment cases; and

31 (B) A reasonable fee for reproducing copies of tapes and  
 32 photographs.

33 (2) A fee shall not be charged to:

34 (A) A nonprofit or volunteer agency that requests searches  
 35 of the investigative files; or

36 (B) A person who is indigent.

1       (c)(1) The department shall not release data that would identify the  
2 person who made the report unless a court of competent jurisdiction orders  
3 release of the information after the court has reviewed in camera the record  
4 related to the report and has found it has reason to believe that the  
5 reporter knowingly made a false report.

6               (2) However, upon request, the information shall be disclosed to  
7 the prosecuting attorney or law enforcement.

8       (d)(1) Any person or agency to whom disclosure is made shall not  
9 disclose to any other person a report or other information obtained pursuant  
10 to this section.

11               (2) However, the person or agency is permitted to consult his or  
12 her own attorney regarding information provided by the department.

13               (3) Nothing in this chapter shall be construed to prevent  
14 subsequent disclosure by the subject of the report.

15       (e) Any record of a screened-out report of child maltreatment shall  
16 not be disclosed except to the prosecuting attorney and law enforcement and  
17 may be used only within the department for purposes of administration of the  
18 program.

19       (f) An unsubstantiated report, including protected health information,  
20 shall be confidential and shall be disclosed only to:

21               (1) The prosecuting attorney;

22               (2) A subject of the report;

23               (3)(A) A grand jury or court upon a finding that information in  
24 the record is necessary for the determination of an issue before the court or  
25 grand jury; and

26                       (B) The grand jury or court may disclose it to parties to  
27 a legal proceeding upon a finding that the report is necessary for the  
28 presentation of a party's complaint or defense and under such terms or  
29 protective order that the court orders;

30               (4)(A) Acting in their official capacities, individual United  
31 States and Arkansas senators and representatives and their authorized staff  
32 members but only if they agree not to permit any re-disclosure of the  
33 information.

34                       (B) However, disclosure shall not be made to any committee  
35 or legislative body of any information that identifies any recipient of  
36 services by name or address;

- 1           (5) Law enforcement;
- 2           (6) Any licensing or registering authority to the extent  
3           necessary to carry out its official responsibilities;
- 4           (7) Adult protective services;
- 5           (8) The Division of Developmental Disabilities Services and the  
6           Division of Aging and Adult Services as to participants of the waiver  
7           program.
- 8           (9) A Court Appointed Special Advocate upon presentation of an  
9           order of appointment for a child who is a subject of a report;
- 10          (10) The attorney ad litem of a child who is the subject of a  
11          report; and
- 12          (11) Any person or entity to whom notification was provided  
13          under this chapter.

14          (g) Hard copy records of unsubstantiated reports shall be retained no  
15          longer than eighteen (18) months for purposes of audit.

16          (h) Information on unsubstantiated reports included in the automated  
17          data system shall be retained indefinitely to assist the department in  
18          assessing future risk and safety.

19

20                                  Subchapter 10  
21                                  Protective Custody.

22

23          12-18-1001. Protective custody generally.

24          (a) A police officer, law enforcement, a juvenile division of circuit  
25          court judge during juvenile proceedings concerning the child or a sibling of  
26          the child, or a designated employee of the Department of Human Services may  
27          take a child into custody or any person in charge of a hospital or similar  
28          institution or any physician treating a child may keep that child in his or  
29          her custody without the consent of the parent or the guardian, whether or not  
30          additional medical treatment is required, if:

31                  (1) The child is subjected to neglect as defined under § 12-18-  
32          103(13)(B) and the department assesses the family and determines that the  
33          newborn and any other children, including siblings, under the custody or care  
34          of the mother are at substantial risk of serious harm such that the children  
35          need to be removed from the custody or care of the mother;

36                  (2) The child is dependent as defined in the Arkansas Juvenile

1 Code of 1989, § 9-27-301 et seq.; or

2 (3) Circumstances or conditions of the child are such that  
3 continuing in his or her place of residence or in the care and custody of the  
4 parent, guardian, custodian, or caretaker presents an immediate danger of  
5 severe maltreatment.

6 (b) However, custody shall not exceed seventy-two (72) hours except in  
7 the event that the expiration of seventy-two (72) hours falls on a weekend or  
8 holiday, in which case custody may be extended through the next business day  
9 following the weekend or holiday.

10  
11 12-18-1002. Placement in a foster home.

12 A sheriff or chief of police may place a child in a Department of Human  
13 Services foster home if:

14 (1) The sheriff or chief of police contacts the on-call worker  
15 for the department and does not get a return phone call within thirty (30)  
16 minutes;

17 (2) The sheriff or chief of police contacts the department  
18 Emergency Notification Line and does not get a return phone call within  
19 fifteen (15) minutes;

20 (3) The foster parent is personally well-known to the sheriff or  
21 the chief of police;

22 (4) The sheriff or chief of police has:

23 (A) Determined that the foster parent's home is safe and  
24 provides adequate accommodations for the child; and

25 (B) Performed a criminal record and child maltreatment  
26 check on the foster parent as required under § 9-28-409; and

27 (5) On the next business day, the sheriff or chief of police  
28 immediately notifies the department of the time and date that the child was  
29 placed in the foster parent's home.

30  
31 12-18-1003. Consent for health care and services.

32 An individual taking a child into custody may give effective consent  
33 for medical, dental, health, and hospital services during protective custody.

34  
35 12-18-1004. Notice when custody is invoked.

36 In any case in which custody is invoked, the individual taking the

1 child into custody shall notify the Department of Human Services in order  
2 that a child protective proceeding may be initiated within the time specified  
3 in this subchapter.

4  
5 12-18-1005. Location.

6 A school, residential facility, hospital, and any other place that a  
7 child may be located shall not require a written court order for the  
8 Department of Human Services to take a seventy-two hour hold under this  
9 section or § 9-27-313.

10  
11 12-18-1006. Custody of children generally — Health and safety of the  
12 child.

13 (a) During the course of any child maltreatment investigation, whether  
14 conducted by the Department of Human Services, the Department of Arkansas  
15 State Police, or local law enforcement, the Department of Human Services  
16 shall assess whether or not the child can safely remain in the home.

17 (b) The child's health and safety shall be the paramount concern in  
18 determining whether or not to remove a child from the custody of his or her  
19 parents.

20  
21 12-18-1007. Services to families generally.

22 (a) The Department of Human Services shall have the authority to make  
23 referrals or provide services during the course of a child maltreatment  
24 investigation.

25 (b) Any family may request supportive services from the Department of  
26 Human Services.

27 (c) Supportive services shall be offered for the purpose of preventing  
28 child maltreatment.

29  
30 12-18-1008. Removal from home — Procedure.

31 (a) If an investigation under this chapter determines that the child  
32 cannot safely remain at home, the Department of Human Services shall take  
33 steps to remove the child under custody as outlined in this chapter or  
34 pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

35 (b) After the Department of Human Services has removed the child, the  
36 child shall be placed in a licensed or approved foster home, shelter,

1 facility, or an exempt child welfare agency as defined at § 9-28-402(12).

2 (c) No one, including the family, the Department of Human Services,  
3 the Department of Arkansas State Police, or local law enforcement shall allow  
4 a child to be placed in a nonapproved or nonlicensed foster home, shelter, or  
5 facility.

6  
7 12-18-1009. When the investigation determines that the child can  
8 safely remain at home.

9 If an investigation under this chapter determines that a child can  
10 safely remain at home, the parents retain the right to keep the child at home  
11 or to place the child outside the home.

12  
13 12-18-1010. When a child maltreatment investigation is determined to  
14 be true.

15 (a) If an investigation under this chapter is determined to be true,  
16 the Department of Human Services may open a protective services case.

17 (b)(1) If the Department of Human Services opens a protective services  
18 case, it shall provide services to the family in an effort to prevent  
19 additional maltreatment to the child or the removal of the child from the  
20 home.

21 (2) The services shall be relevant to the needs of the family.

22 (c) If at any time during the protective services case the Department  
23 of Human Services determines that the child cannot safely remain at home, it  
24 shall take steps to remove the child under custody as outlined in this  
25 chapter or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

26 (d) Upon request, the department shall be provided at no cost a copy  
27 of the child's public and private school records if the department has an  
28 open protective services case.

29 (e) Upon request, the department shall be provided a copy of the  
30 results of radiology procedures, videotapes, photographs, or medical records  
31 on a child if the department has an open protective services case.

32  
33 12-18-1010. When a report of child maltreatment is determined to be  
34 unsubstantiated.

35 (a) If the report of child maltreatment is unsubstantiated, the  
36 Department of Human Services may offer supportive services to the family.



1        (b) The family may accept or reject supportive services at any time.

2  
3        SECTION 2. Arkansas Code Title 12, Chapter 12, Subchapter 5 is  
4 repealed.

5        ~~12-12-501. Title and purpose.~~

6        ~~(a) This subchapter shall be known and may be cited as the "Arkansas  
7 Child Maltreatment Act".~~

8        ~~(b) It is the purpose of this subchapter to:~~

9                ~~(1) Provide a system for the reporting of known or suspected  
10 child maltreatment;~~

11                ~~(2) Ensure the immediate screening, safety assessment, and  
12 prompt investigation of reports of known or suspected child maltreatment;~~

13                ~~(3) Ensure that immediate steps are taken to:~~

14                        ~~(A) Protect a maltreated child and any other child under  
15 the same care who may also be in danger of maltreatment; and~~

16                        ~~(B) Place a child who is in immediate danger of severe  
17 maltreatment in a safe environment;~~

18                ~~(4) Provide for immunity from criminal prosecution for an  
19 individual making a good faith report of suspected child maltreatment;~~

20                ~~(5) Preserve the confidentiality of all records in order to  
21 protect the rights of the child and of the child's parents or guardians;~~

22                ~~(6) Encourage the cooperation of state law enforcement  
23 officials, courts, and state agencies in the investigation, assessment,  
24 prosecution, and treatment of child maltreatment; and~~

25                ~~(7) Stabilize the home environment if a child's health and  
26 safety are not at risk.~~

27  
28        ~~12-12-502. Regulations—Cooperative agreements.~~

29        ~~(a) The Director of the Department of Human Services shall promulgate  
30 regulations to implement the provisions of this subchapter.~~

31        ~~(b)(1) The director shall initiate formal cooperative agreements with  
32 law enforcement agencies, prosecuting attorneys, and other appropriate  
33 agencies and individuals in order to implement a coordinated multidisciplinary  
34 team approach to intervention in reports involving severe maltreatment and  
35 all reports requested by the district prosecuting attorney pertaining to a  
36 law enforcement or prosecutor's investigation.~~

1           ~~(1) The director may enter into cooperative agreements with~~  
 2 ~~other states to create a national child maltreatment registration system.~~  
 3           ~~12-12-503. Definitions.~~

4           ~~As used in this subchapter:~~

5           ~~(1)(A) "Abandonment" means:~~

6                   ~~(i) Failure of a parent to:~~

7                           ~~(a) Provide reasonable support and to maintain~~  
 8 ~~regular contact with a juvenile through statement or contact when the failure~~  
 9 ~~is accompanied by an intention on the part of the parent to permit the~~  
 10 ~~condition to continue for an indefinite period in the future;~~

11                           ~~(b) Support or maintain regular contact with a~~  
 12 ~~juvenile without just cause; or~~

13                           ~~(ii) An articulated intent to forego parental~~  
 14 ~~responsibility.~~

15           ~~(B) "Abandonment" does not include acts or omissions of a~~  
 16 ~~parent toward a married minor;~~

17           ~~(2)(A) "Abuse" means any of the following acts or omissions by a~~  
 18 ~~parent, guardian, custodian, foster parent, person eighteen (18) years of age~~  
 19 ~~or older living in the home with a child whether related or unrelated to the~~  
 20 ~~child, or any person who is entrusted with the juvenile's care by a parent,~~  
 21 ~~guardian, custodian, or foster parent, including, but not limited to, an~~  
 22 ~~agent or employee of a public or private residential home, child care~~  
 23 ~~facility, public or private school, or any person legally responsible for the~~  
 24 ~~juvenile's welfare, but excluding the spouse of a minor:~~

25                           ~~(i) Extreme or repeated cruelty to a juvenile;~~

26                           ~~(ii) Engaging in conduct creating a realistic and~~  
 27 ~~serious threat of death, permanent or temporary disfigurement, or impairment~~  
 28 ~~of any bodily organ;~~

29                           ~~(iii) Injury to a juvenile's intellectual,~~  
 30 ~~emotional, or psychological development as evidenced by observable and~~  
 31 ~~substantial impairment of the juvenile's ability to function within the~~  
 32 ~~juvenile's normal range of performance and behavior;~~

33                           ~~(iv) Any injury that is at variance with the history~~  
 34 ~~given;~~

35                           ~~(v) Any nonaccidental physical injury;~~

36                           ~~(vi) Any of the following intentional or knowing~~

1 ~~acts, with physical injury and without justifiable cause;~~

2 ~~(a) Throwing, kicking, burning, biting, or~~  
 3 ~~cutting a child;~~

4 ~~(b) Striking a child with a closed fist;~~

5 ~~(c) Shaking a child; or~~

6 ~~(d) Striking a child on the face or head; or~~

7 ~~(vii) Any of the following intentional or knowing~~  
 8 ~~acts, with or without physical injury;~~

9 ~~(a) Striking a child six (6) years of age or~~  
 10 ~~younger on the face or head;~~

11 ~~(b) Shaking a child three (3) years of age or~~  
 12 ~~younger;~~

13 ~~(c) Interfering with a child's breathing;~~

14 ~~(d) Pinching, biting, or striking a child in~~  
 15 ~~the genital area;~~

16 ~~(e) Tying a child to a fixed or heavy object~~  
 17 ~~or binding or tying a child's limbs together;~~

18 ~~(f) Giving a child or permitting a child to~~  
 19 ~~consume or inhale a poisonous or noxious substance not prescribed by a~~  
 20 ~~physician that has the capacity to interfere with normal physiological~~  
 21 ~~functions;~~

22 ~~(g) Giving a child or permitting a child to~~  
 23 ~~consume or inhale a substance not prescribed by a physician that has the~~  
 24 ~~capacity to alter the mood of the child, including, but not limited to, the~~  
 25 ~~following;~~

26 ~~(1) Marijuana;~~

27 ~~(2) Alcohol, excluding alcohol given to~~  
 28 ~~a child during a recognized and established religious ceremony or service;~~

29 ~~(3) A narcotic; or~~

30 ~~(4) An over the counter drug if a person~~  
 31 ~~purposely administers an overdose to a child or purposely gives an~~  
 32 ~~inappropriate over the counter drug to a child and the child is detrimentally~~  
 33 ~~impacted by the overdose or the over the counter drug;~~

34 ~~(h) Exposing a child to a chemical that has~~  
 35 ~~the capacity to interfere with normal physiological functions, including, but~~  
 36 ~~not limited to, a chemical used or generated during the manufacture of~~

1 methamphetamine; or

2 (i) Subjecting a child to Munchausen's  
3 syndrome by proxy or a factitious illness by proxy if the incident is  
4 reported and confirmed by medical personnel or a medical facility.

5 (B)(i) The list in subdivision (2)(A) of this section is  
6 illustrative of unreasonable action and is not intended to be exclusive.

7 (ii) No unreasonable action shall be construed to  
8 permit a finding of abuse without having established the elements of abuse.

9 (C)(i) "Abuse" shall not include physical discipline of a  
10 child when it is reasonable and moderate and is inflicted by a parent or  
11 guardian for purposes of restraining or correcting the child.

12 (ii) "Abuse" shall not include when a child suffers  
13 transient pain or minor temporary marks as the result of an appropriate  
14 restraint if:

15 (a) The person exercising the restraint is an  
16 employee of an agency licensed or exempted from licensure under The Child  
17 Welfare Agency Licensing Act, § 9-28-401 et seq.;

18 (b) The agency has policy and procedures  
19 regarding restraints;

20 (c) No other alternative exists to control the  
21 child except for a restraint;

22 (d) The child is in danger or hurting himself  
23 or herself or others;

24 (e) The person exercising the restraint has  
25 been trained in properly restraining children, de-escalation, and conflict  
26 resolution techniques; and

27 (f) The restraint is for a reasonable period  
28 of time.

29 (iii) Reasonable and moderate physical discipline  
30 inflicted by a parent or guardian shall not include any act that is likely to  
31 cause and which does cause injury more serious than transient pain or minor  
32 temporary marks.

33 (iv) The age, size, and condition of the child and  
34 the location of the injury and the frequency or recurrence of injuries shall  
35 be considered when determining whether the physical discipline is reasonable  
36 or moderate;

1           ~~(3) “Caretaker” means a parent, guardian, custodian, foster~~  
 2 ~~parent, or any person ten (10) years of age or older who is entrusted with a~~  
 3 ~~child’s care by a parent, guardian, custodian, or foster parent, including,~~  
 4 ~~but not limited to, an agent or employee of a public or private residential~~  
 5 ~~home, child care facility, public or private school, or any person~~  
 6 ~~responsible for a child’s welfare, but excluding the spouse of a minor;~~

7           ~~(4)(A) “Central intake”, otherwise referred to as the “child~~  
 8 ~~abuse hotline”, means a unit that shall be established by the Department of~~  
 9 ~~Human Services for the purpose of receiving and recording notification made~~  
 10 ~~pursuant to this subchapter.~~

11           ~~(B) Central intake shall be staffed twenty four (24) hours~~  
 12 ~~per day and shall have statewide accessibility through a toll free telephone~~  
 13 ~~number;~~

14           ~~(5) “Child” or “juvenile” means an individual who is from birth~~  
 15 ~~to eighteen (18) years of age;~~

16           ~~(6) “Child maltreatment” means abuse, sexual abuse, neglect,~~  
 17 ~~sexual exploitation, or abandonment;~~

18           ~~(7) “Department” means the Department of Human Services;~~

19           ~~(8) “Deviate sexual activity” means any act of sexual~~  
 20 ~~gratification involving;~~

21           ~~(A) Penetration, however slight, of the anus or mouth of~~  
 22 ~~one person by the penis of another person; or~~

23           ~~(B) Penetration, however slight, of the labia majora or~~  
 24 ~~anus of one person by any body member or foreign instrument manipulated by~~  
 25 ~~another person;~~

26           ~~(9)(A)(i) “Forceible compulsion” means physical force,~~  
 27 ~~intimidation, or a threat, express or implied, of physical injury to or~~  
 28 ~~death, rape, sexual abuse, or kidnapping of any person.~~

29           ~~(ii) If the act was committed against the will of~~  
 30 ~~the juvenile, then forceible compulsion has been used.~~

31           ~~(B) The age, developmental stage, and stature of the~~  
 32 ~~victim and the relationship of the victim to the assailant, as well as the~~  
 33 ~~threat of deprivation of affection, rights, and privileges from the victim by~~  
 34 ~~the assailant, shall be considered in weighing the sufficiency of the~~  
 35 ~~evidence to prove compulsion;~~

36           ~~(10) “Indecent exposure” means the exposure by a person of the~~

1 ~~person's sexual organs for the purpose of arousing or gratifying the sexual~~  
 2 ~~desire of the person or of any other person under circumstances in which the~~  
 3 ~~person knows the conduct is likely to cause affront or alarm;~~

4 ~~(11) "Near fatality" means an act that, as certified by a~~  
 5 ~~physician, places the child in serious or critical condition;~~

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

14 ~~(i) Failure or refusal to prevent the abuse of the~~  
 15 ~~juvenile when the person knows or has reasonable cause to know the juvenile~~  
 16 ~~is or has been abused;~~

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

23 ~~(iii) Failure to take reasonable action to protect~~  
 24 ~~the juvenile from abandonment, abuse, sexual abuse, sexual exploitation,~~  
 25 ~~neglect, or parental unfitness when the existence of the condition was known~~  
 26 ~~or should have been known;~~

27 ~~(iv) Failure or irremediable inability to provide~~  
 28 ~~for the essential and necessary physical, mental, or emotional needs of the~~  
 29 ~~juvenile, including the failure to provide a shelter that does not pose a~~  
 30 ~~risk to the health or safety of the juvenile;~~

31 ~~(v) Failure to provide for the juvenile's care and~~  
 32 ~~maintenance, proper or necessary support, or medical, surgical, or other~~  
 33 ~~necessary care;~~

34 ~~(vi) Failure, although able, to assume~~  
 35 ~~responsibility for the care and custody of the juvenile or to participate in~~  
 36 ~~a plan to assume such responsibility; or~~

1                                 ~~(vii) Failure to appropriately supervise the~~  
 2 ~~juvenile that results in the juvenile's being left alone at an inappropriate~~  
 3 ~~age or in inappropriate circumstances creating a dangerous situation or a~~  
 4 ~~situation that puts the juvenile at risk of harm.~~

5                                 ~~(B)(i) "Neglect" shall also include:~~

6   ~~(a) Causing a child to be born with an illegal~~  
 7 ~~substance present in the child's bodily fluids or bodily substances as a~~  
 8 ~~result of the pregnant mother's knowingly using an illegal substance before~~  
 9 ~~the birth of the child; or~~

10   ~~(b) At the time of the birth of a child, the~~  
 11 ~~presence of an illegal substance in the mother's bodily fluids or bodily~~  
 12 ~~substances as a result of the pregnant mother's knowingly using an illegal~~  
 13 ~~substance before the birth of the child.~~

14   ~~(ii) As used in this subdivision (12)(B), "illegal~~  
 15 ~~substance" means a drug that is prohibited to be used or possessed without a~~  
 16 ~~prescription under the Arkansas Criminal Code, § 5-1-101 et seq.~~

17   ~~(iii) A test of the child's bodily fluids or bodily~~  
 18 ~~substances may be used as evidence to establish neglect under subdivision~~  
 19 ~~(12)(B)(i)(a ) of this section.~~

20   ~~(iv) A test of the mother's bodily fluids or bodily~~  
 21 ~~substances may be used as evidence to establish neglect under subdivision~~  
 22 ~~(12)(B)(i)(b ) of this section;~~

23   ~~(13) "Parent" means a biological mother, an adoptive parent, or~~  
 24 ~~a man to whom the biological mother was married at the time of conception or~~  
 25 ~~birth or who has been found by a court of competent jurisdiction to be the~~  
 26 ~~biological father of the juvenile;~~

27   ~~(14) "Pornography" means:~~

28   ~~(A) Pictures, movies, or videos that lack serious~~  
 29 ~~literary, artistic, political, or scientific value and that, when taken as a~~  
 30 ~~whole and applying contemporary community standards, would appear to the~~  
 31 ~~average person to appeal to the prurient interest;~~

32   ~~(B) Material that depicts sexual conduct in a patently~~  
 33 ~~offensive manner lacking serious literary, artistic, political, or scientific~~  
 34 ~~value; or~~

35   ~~(C) Obscene or licentious material;~~

36   ~~(15) "Serious bodily injury" means bodily injury that involves~~

1 ~~substantial risk of death, extreme physical pain, protracted and obvious~~  
 2 ~~disfigurement, or protracted loss or impairment of the function of a bodily~~  
 3 ~~member, organ, or mental faculty;~~

4 ~~(16) "Severe maltreatment" means sexual abuse, sexual~~  
 5 ~~exploitation, acts or omissions which may or do result in death, abuse~~  
 6 ~~involving the use of a deadly weapon as defined by § 5-1-102, bone fracture,~~  
 7 ~~internal injuries, burns, immersions, suffocation, abandonment, medical~~  
 8 ~~diagnosis of failure to thrive, or causing a substantial and observable~~  
 9 ~~change in the behavior or demeanor of the child;~~

10 ~~(17) "Sexual abuse" means:~~

11 ~~(A) By a person ten (10) years of age or older to a person~~  
 12 ~~younger than eighteen (18) years of age:~~

13 ~~(i) Sexual intercourse, deviate sexual activity, or~~  
 14 ~~sexual contact by forcible compulsion;~~

15 ~~(ii) Attempted sexual intercourse, deviate sexual~~  
 16 ~~activity, or sexual contact by forcible compulsion;~~

17 ~~(iii) Indecent exposure; or~~

18 ~~(iv) Forcing the watching of pornography or live~~  
 19 ~~sexual activity;~~

20 ~~(B) By a person eighteen (18) years of age or older to a~~  
 21 ~~person not his or her spouse who is younger than sixteen (16) years of age:~~

22 ~~(i) Sexual intercourse, deviate sexual activity, or~~  
 23 ~~sexual contact; or~~

24 ~~(ii) Attempted sexual intercourse, deviate sexual~~  
 25 ~~activity, or sexual contact;~~

26 ~~(C) By a sibling or caretaker to a person younger than~~  
 27 ~~eighteen (18) years of age:~~

28 ~~(i) Sexual intercourse, deviate sexual activity, or~~  
 29 ~~sexual contact; or~~

30 ~~(ii) Attempted sexual intercourse, deviate sexual~~  
 31 ~~activity, or sexual contact;~~

32 ~~(D) By a caretaker to a person younger than eighteen (18)~~  
 33 ~~years of age:~~

34 ~~(i) Forcing or encouraging the watching of~~  
 35 ~~pornography;~~

36 ~~(ii) Forcing, permitting, or encouraging the~~



1 ~~watching of live sexual activity;~~  
2 ~~(iii) Forcing the listening to a phone sex line; or~~  
3 ~~(iv) An act of voyeurism as defined under § 5-16-~~  
4 ~~102; or~~  
5 ~~(E) By a person younger than ten (10) years of age to a~~  
6 ~~person younger than eighteen (18) years of age:~~  
7 ~~(i) Sexual intercourse, deviate sexual activity, or~~  
8 ~~sexual contact by forcible compulsion; or~~  
9 ~~(ii) Attempted sexual intercourse, deviate sexual~~  
10 ~~activity, or sexual contact by forcible compulsion;~~  
11 ~~(18)(A)(i) "Sexual contact" means any act of sexual~~  
12 ~~gratification involving:~~  
13 ~~(a) The touching, directly or through~~  
14 ~~clothing, of the sex organs, buttocks, or anus of a person or the breast of a~~  
15 ~~female;~~  
16 ~~(b) The encouraging of a child to touch the~~  
17 ~~offender in a sexual manner; or~~  
18 ~~(c) The offender requesting to touch a child~~  
19 ~~in a sexual manner.~~  
20 ~~(ii) Evidence of sexual gratification may be~~  
21 ~~inferred from the attendant circumstances surrounding the specific complaint~~  
22 ~~of child maltreatment.~~  
23 ~~(B) However, nothing in this section shall permit normal~~  
24 ~~affectionate hugging to be construed as sexual contact;~~  
25 ~~(19) "Sexual exploitation" means:~~  
26 ~~(A) Allowing, permitting, or encouraging participation or~~  
27 ~~depiction of the child in:~~  
28 ~~(i) Prostitution;~~  
29 ~~(ii) Obscene photography;~~  
30 ~~(iii) Obscene filming; or~~  
31 ~~(B) Obscenely depicting, obscenely posing, or obscenely~~  
32 ~~posturing a child for any use or purpose;~~  
33 ~~(20) "Subject of the report" means:~~  
34 ~~(A) The offender;~~  
35 ~~(B) The custodial and noncustodial parents, guardians, and~~  
36 ~~legal custodians of the child who is subject to suspected maltreatment; and~~

1                   ~~(C) The child who is the subject of suspected~~  
2 ~~maltreatment; and~~

3                   ~~(21) "Underaged juvenile aggressor" means any child younger than~~  
4 ~~ten (10) years of age for whom a report of sexual abuse has been determined~~  
5 ~~to be true for sexual abuse to another child.~~

6  
7                   ~~12-12-504. Penalties.~~

8                   ~~(a)(1) Any person or official negligently or willfully failing to make~~  
9 ~~notification when required by this subchapter shall be guilty of a Class C~~  
10 ~~misdemeanor.~~

11                   ~~(2) Any person or official willfully making false notification~~  
12 ~~pursuant to this subchapter, knowing such allegations to be false, shall be~~  
13 ~~guilty of a Class A misdemeanor.~~

14                   ~~(3) Any person or official willfully making false notification~~  
15 ~~pursuant to this subchapter, knowing such allegations to be false, and who~~  
16 ~~has been previously convicted of making willful false allegations shall be~~  
17 ~~guilty of a Class D felony.~~

18                   ~~(b) Any person, official, or institution required by this subchapter~~  
19 ~~to make notification of suspected child maltreatment who willfully fails to~~  
20 ~~do so shall be civilly liable for damages proximately caused by that failure.~~

21                   ~~(c) Any person who willfully permits, and any other person who~~  
22 ~~encourages, the release of data or information contained in the central~~  
23 ~~registry to persons to whom disclosure is not permitted by this subchapter~~  
24 ~~shall be guilty of a Class A misdemeanor.~~

25                   ~~(d) Judges or prosecuting attorneys who fail to make notification when~~  
26 ~~required by this subchapter shall not be subject to any of the penalties~~  
27 ~~outlined in this subchapter.~~

28  
29                   ~~12-12-505. Central registry.~~

30                   ~~(a) There is established within the Department of Human Services a~~  
31 ~~statewide central registry for the collection of records of cases involving~~  
32 ~~allegations of child maltreatment that are determined to be true under this~~  
33 ~~subchapter.~~

34                   ~~(b)(1)(A)(i) Records of all cases in which allegations are determined~~  
35 ~~to be true shall be retained by the central registry.~~

36                                   ~~(ii) If an offender is found guilty of, pleads~~

1 ~~guilty to, or pleads nolo contendere to an act that is the same act for which~~  
2 ~~the offender is named in the central registry regardless of any subsequent~~  
3 ~~expungement of the offense from the offender's criminal record, the offender~~  
4 ~~shall always remain in the central registry unless the conviction is reversed~~  
5 ~~or vacated.~~

6 ~~(iii)(a) The department shall identify in its policy~~  
7 ~~and procedures manual the types of child maltreatment that will automatically~~  
8 ~~result in the removal of the name of an offender from the central registry.~~

9 ~~(b) If an offender has been entered into the~~  
10 ~~central registry as an offender for the named types of child maltreatment~~  
11 ~~identified under subdivision (b)(1)(A)(iii)(a ) of this section, the~~  
12 ~~offender's name shall be removed from the central registry on reports of this~~  
13 ~~type of child maltreatment if the offender has not had a subsequent true~~  
14 ~~report of this type for one (1) year and more than one (1) year has passed~~  
15 ~~since the closure of any protective services or foster care case opened as~~  
16 ~~the result of this report.~~

17 ~~(iv)(a) The department shall identify in its policy~~  
18 ~~and procedures manual the types of child maltreatment for which an offender~~  
19 ~~can request that the offender's name be removed from the central registry.~~

20 ~~(b) If an offender has been entered into the~~  
21 ~~central registry as an offender for the named types of child maltreatment~~  
22 ~~identified under subdivision (b)(1)(A)(iv)(a ) of this section, the offender~~  
23 ~~may petition the department requesting that the offender's name be removed~~  
24 ~~from the central registry if the offender has not had a subsequent true~~  
25 ~~report of this type for five (5) years and more than five (5) years have~~  
26 ~~passed since the closure of any protective services or foster care case~~  
27 ~~opened as the result of this report.~~

28 ~~(c) The department shall develop policy and~~  
29 ~~procedures to assist it in determining whether to remove the offender's name~~  
30 ~~from the central registry.~~

31 ~~(d) If the department denies the request for~~  
32 ~~removal of the name from the central registry, the offender may request an~~  
33 ~~administrative hearing within thirty (30) days from receipt of the~~  
34 ~~department's decision.~~

35 ~~(v) Notwithstanding the provisions of subdivisions~~  
36 ~~(b)(1)(A)(i) (iv) of this section, with regard to an offender who was a~~

1 juvenile at the time of the act or omission that resulted in a true finding  
2 of child maltreatment, the department shall:

3 (a) ~~Not remove the offender's name from the~~  
4 ~~central registry if the offender was found guilty of, pleaded guilty to, or~~  
5 ~~pleaded nolo contendere to a felony in circuit court as an adult for the act~~  
6 ~~that is the same act for which the offender is named in the central registry~~  
7 ~~unless the conviction is reversed or vacated; or~~

8 (b) ~~Remove the offender's name from the~~  
9 ~~central registry if:~~

10 (1) ~~More than five (5) years have~~  
11 ~~elapsed from the date of the act or omission that caused the true finding of~~  
12 ~~child maltreatment and there have been no subsequent acts or omissions~~  
13 ~~resulting in a true finding of child maltreatment; and~~

14 (2) ~~The offender can prove by a~~  
15 ~~preponderance of the evidence that the juvenile offender has been~~  
16 ~~rehabilitated.~~

17 (B) ~~Records of all cases in which allegations are~~  
18 ~~determined to be unsubstantiated shall not be included in the central~~  
19 ~~registry.~~

20 (2)(A) ~~Information included in the automated data system shall be~~  
21 ~~retained indefinitely to assist the department in assessing future risk and~~  
22 ~~safety.~~

23 (B) ~~Hard copy records of unsubstantiated reports shall be~~  
24 ~~retained no longer than eighteen (18) months for purposes of audit.~~

25 (c) ~~The central registry may adopt such rules as may be necessary to~~  
26 ~~encourage cooperation with other states in exchanging true reports and to~~  
27 ~~effect a national registration system.~~

28 (d) ~~The Director of the Department of Human Services shall adopt rules~~  
29 ~~necessary to carry out this subchapter pursuant to the Arkansas~~  
30 ~~Administrative Procedure Act, § 25-15-201 et seq., except that the director~~  
31 ~~shall not begin the process under the Arkansas Administrative Procedure Act,~~  
32 ~~§ 25-15-201 et seq., until the proposed rules have been reviewed by the House~~  
33 ~~Interim Committee on Aging, Children and Youth, Legislative and Military~~  
34 ~~Affairs and the Senate Interim Committee on Children and Youth.~~

35 (e)(1) ~~The department may charge:~~

36 (A) ~~A reasonable fee not to exceed ten dollars (\$10.00)~~

1 ~~for researching, copying, and mailing records of the investigative files of~~  
 2 ~~child maltreatment cases; and~~

3 ~~(B) A reasonable fee for reproducing copies of tapes and~~  
 4 ~~photographs.~~

5 ~~(2) No fee may be charged to:~~

6 ~~(A) A nonprofit or volunteer agency that requests searches~~  
 7 ~~of the investigative files; or~~

8 ~~(B) A person who is indigent.~~

9  
 10 ~~12-12-506. Disclosure of central registry data.~~

11 ~~(a)(1) A report made pursuant to this subchapter shall be confidential~~  
 12 ~~and shall be used or disclosed only as provided in this section.~~

13 ~~(2)(A) If the allegations are determined to be true in~~  
 14 ~~accordance with § 12-12-512, disclosure, including protected health~~  
 15 ~~information, is absolutely limited to:~~

16 ~~(i) The administration of the adoption, foster care,~~  
 17 ~~children's and adult protective services programs, or child care licensing~~  
 18 ~~programs of any state;~~

19 ~~(ii) A federal, state, or local government entity,~~  
 20 ~~or any agent of the entity, having a need for the information in order to~~  
 21 ~~carry out their responsibilities under law to protect children from abuse or~~  
 22 ~~neglect;~~

23 ~~(iii) Any person who is the subject of a true~~  
 24 ~~report;~~

25 ~~(iv) A civil or administrative proceeding connected~~  
 26 ~~with the administration of the Arkansas Child Welfare State Plan when the~~  
 27 ~~court or hearing officer determines that the information is necessary for the~~  
 28 ~~determination of an issue before the court or agency;~~

29 ~~(v) The administration of any federal or federally~~  
 30 ~~assisted program that provides assistance, in cash or in kind, or services~~  
 31 ~~directly to individuals on the basis of need;~~

32 ~~(vi) An audit or similar activity conducted in~~  
 33 ~~connection with the administration of such a plan or program by any~~  
 34 ~~governmental agency that may by law conduct the audit or activity;~~

35 ~~(vii) A person, agency, or organization engaged in a~~  
 36 ~~bona fide research or evaluation project, but without information identifying~~

1 ~~individuals named in a report or record, provided that:~~

2 ~~(a) Having that information open for review is~~  
3 ~~essential to the research or evaluation;~~

4 ~~(b) Prior written approval is granted by the~~  
5 ~~Director of the Department of Human Services; and~~

6 ~~(c) The child, through his or her parent,~~  
7 ~~guardian, or guardian ad litem, gives permission to release the information;~~

8 ~~(viii) A properly constituted authority, including~~  
9 ~~multidisciplinary teams referenced in § 12-12-502(b), investigating a report~~  
10 ~~of known or suspected child abuse or neglect or providing services to a child~~  
11 ~~or family that is the subject of a report;~~

12 ~~(ix)(a) The Division of Child Care and Early~~  
13 ~~Childhood Education of the Department of Human Services and the child care~~  
14 ~~facility owner or operator who requested the registry information through a~~  
15 ~~signed notarized release from an individual who is a volunteer or who has~~  
16 ~~applied for employment or who is currently employed by a child care facility~~  
17 ~~or who is the owner or operator of a child care facility.~~

18 ~~(b) This disclosure shall be for the limited~~  
19 ~~purpose of providing central registry background information and shall~~  
20 ~~indicate a true finding only;~~

21 ~~(x) Child abuse citizen panels described in the~~  
22 ~~Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;~~

23 ~~(xi) Child fatality review panels as authorized by~~  
24 ~~the department;~~

25 ~~(xii) The general public, the findings or~~  
26 ~~information about the case of child abuse or neglect that has resulted in a~~  
27 ~~child fatality or near fatality, but the central registry may redact any~~  
28 ~~information concerning siblings, attorney-client communications, and other~~  
29 ~~confidential communications;~~

30 ~~(xiii) A grand jury or court, upon a finding that~~  
31 ~~information in the record is necessary for the determination of an issue~~  
32 ~~before the court or grand jury;~~

33 ~~(xiv) The current foster parents of a child who is a~~  
34 ~~subject of a report;~~

35 ~~(xv)(a) Individual federal and state senators and~~  
36 ~~representatives in their official capacity and their staff members who agree~~

1 ~~not to allow any redisclosure of information.~~

2 ~~(b) However, no disclosure shall be made to~~  
 3 ~~any committee or legislative body of any information that identifies any~~  
 4 ~~recipient of services by name or address;~~

5 ~~(xvi) A court appointed special advocate upon~~  
 6 ~~presentation of an order of appointment for a child who is a subject of a~~  
 7 ~~report;~~

8 ~~(xvii) The attorney ad litem of a child who is the~~  
 9 ~~subject of a report;~~

10 ~~(xviii)(a) An employer or volunteer agency for~~  
 11 ~~purposes of screening an employee, applicant, or volunteer who is or will be~~  
 12 ~~engaged in employment or activity with children, the elderly, individuals~~  
 13 ~~with disabilities, or individuals with mental illness upon submission of a~~  
 14 ~~signed, notarized release from the employee, applicant, or volunteer.~~

15 ~~(b) The registry shall release only the~~  
 16 ~~following information on founded reports to the employer or agency:~~

17 ~~(1) That the employee, applicant, or~~  
 18 ~~volunteer has a founded report;~~

19 ~~(2) The date the investigation was~~  
 20 ~~completed; and~~

21 ~~(3) The type of founded report; and~~

22 ~~(xix) The Division of Developmental Disabilities~~  
 23 ~~Services and the Division of Aging and Adult Services as to participants of~~  
 24 ~~the waiver program.~~

25 ~~(B) A report of an investigative determination that is~~  
 26 ~~true shall be disclosed to the Division of Child Care and Early Childhood~~  
 27 ~~Education of the Department of Human Services, by written report only, for~~  
 28 ~~purposes of enforcement of licensing laws and regulations.~~

29 ~~(b) Any licensing or registering authority in receipt of initial~~  
 30 ~~notification of suspected child maltreatment may access the central registry~~  
 31 ~~to the extent necessary to carry out its official responsibilities, but the~~  
 32 ~~information must be maintained as confidential.~~

33 ~~(c)(1) Any person or agency to whom disclosure is made shall not~~  
 34 ~~disclose to any other person a report or other information obtained pursuant~~  
 35 ~~to this section.~~

36 ~~(2) However, a local educational agency or a school counselor~~

1 shall forward all true reports of child maltreatment received from the  
2 department whenever a child transfers from one (1) local educational agency  
3 to another and shall notify the department of the child's new school, and  
4 address, if known.

5 (3) Any person disclosing information in violation of this  
6 subsection shall be guilty of a Class C misdemeanor.

7 (d) A true report that has been administratively appealed pursuant to  
8 this subchapter and that has been stayed because of criminal proceedings  
9 shall not be disclosed other than for administration of adoption, foster  
10 care, or children's protective services programs.

11 (e)(1) The department shall not release data that would identify the  
12 person who made the report unless a court of competent jurisdiction orders  
13 release of the information after the court has reviewed, in camera, the  
14 record related to the report and has found it has reason to believe that the  
15 reporter knowingly made a false report.

16 (2) However, the information shall be disclosed to the  
17 prosecuting attorney or law enforcement officers on request.

18 (f) Within ten (10) days following an investigative determination, the  
19 department shall provide a mandated reporter who made notification with  
20 information as to whether an investigation has been conducted and whether  
21 services have been offered.

22 (g) The department may disclose the investigative determination of any  
23 offender when the offender is engaged in child-related activities or  
24 employment and the department has determined that children under the care of  
25 the offender are at risk of maltreatment by the offender.

26 (h) Nothing in this subchapter shall be construed to prevent  
27 subsequent disclosure by the subject of the report.

28 (i) Any record of a screened-out report of child maltreatment shall  
29 not be disclosed except to the prosecuting attorney and an appropriate law  
30 enforcement agency and may be used only within the department for purposes of  
31 administration of the program.

32 (j)(1) Information on a pending investigation is confidential and may  
33 be disclosed only as provided in this section.

34 (2) Information on a pending investigation shall be released  
35 upon request to:

36 (A) The department;



1                   ~~(B) Law enforcement;~~

2                   ~~(C) The prosecuting attorney's office;~~

3                   ~~(D) A multidisciplinary team under § 12-12-502;~~

4                   ~~(E) Any licensing or registering authority, including a~~  
 5 ~~school board, superintendent, or principal to the extent necessary to carry~~  
 6 ~~out its official responsibilities, but the information shall be maintained as~~  
 7 ~~confidential; and~~

8                   ~~(F)(i) Individual federal and state senators and~~  
 9 ~~representatives and their staff members who agree not to allow any~~  
 10 ~~redisclosure of information.~~

11                   ~~(ii) However, no disclosure may be made to any~~  
 12 ~~committee or legislative body.~~

13                   ~~(3) Information on a pending investigation may be released to or~~  
 14 ~~disclosed in a circuit court child custody case or similar case if:~~

15                   ~~(A) No seventy two hour hold has been exercised under this~~  
 16 ~~subchapter, or pleadings filed pursuant to the Arkansas Juvenile Code of~~  
 17 ~~1989, § 9-27-301 et seq.;~~

18                   ~~(B) Written notice of intent to request release or~~  
 19 ~~disclosure is provided to the investigating agency at least five (5) days~~  
 20 ~~before the date for release or disclosure;~~

21                   ~~(C) The investigating agency has the opportunity to appear~~  
 22 ~~before the court and be heard on the issue of release or disclosure;~~

23                   ~~(D) The information gathered by the investigative agency~~  
 24 ~~is necessary for the determination of an issue before the court;~~

25                   ~~(E) Waiting until completion of the investigation will~~  
 26 ~~jeopardize the health or safety of the child in the custody case;~~

27                   ~~(F) A protective order is issued to prevent redisclosure~~  
 28 ~~of the information provided by the investigating agency or the information is~~  
 29 ~~released or disclosed only to the court in camera; and~~

30                   ~~(G) Release or disclosure of the information will not~~  
 31 ~~compromise a criminal investigation.~~

32                   ~~(4)(A) Information on a pending investigation may be released to~~  
 33 ~~or disclosed in the circuit court if the victim or offender has an open~~  
 34 ~~dependency neglect or family in need of services case before the circuit~~  
 35 ~~court in the following circumstances:~~

36                   ~~(i) A petition for dependency neglect has been filed~~

1 and the pending investigation is the basis in whole or part for the petition  
2 for dependency neglect;

3                   (ii) ~~The department identifies the pending~~  
4 ~~investigation in a court report that is provided to all of the parties before~~  
5 ~~the hearing; or~~

6                   (iii) ~~Written notice of intent to request release or~~  
7 ~~disclosure is provided by a party to all other parties in the matter and to~~  
8 ~~the investigating agency at least five (5) days before the date for release~~  
9 ~~or disclosure.~~

10                   (B) ~~The circuit court shall order release or disclosure~~  
11 ~~only after:~~

12                   (i) ~~Providing all parties and the investigating~~  
13 ~~agency, if not a party, the opportunity to appear before the court and be~~  
14 ~~heard on the issue of release or disclosure;~~

15                   (ii) ~~Determining that the information gathered thus~~  
16 ~~far by the investigative agency is necessary for the determination of an~~  
17 ~~issue before the court;~~

18                   (iii) ~~Determining that waiting until the completion~~  
19 ~~of the investigation will jeopardize the health and safety of the child in~~  
20 ~~the dependency neglect or family in need of services case;~~

21                   (iv) ~~Entering a protective order to prevent~~  
22 ~~redisclosure of the information provided by the investigative agency or~~  
23 ~~limiting the release or disclosure of the information to only the court in~~  
24 ~~camera; and~~

25                   (v) ~~Determining that releasing or disclosing the~~  
26 ~~information will not compromise a criminal investigation.~~

27                   (C) ~~However, nothing in subdivision (j)(4)(B) of this~~  
28 ~~section limits discovery by a party if a petition for dependency neglect has~~  
29 ~~been filed but not yet adjudicated.~~

30  
31           12-12-507. ~~Reports of suspected abuse or neglect.~~

32           (a) ~~Any person with reasonable cause to suspect child maltreatment or~~  
33 ~~that a child has died as a result of child maltreatment, or who observes a~~  
34 ~~child being subjected to conditions or circumstances that would reasonably~~  
35 ~~result in child maltreatment, may immediately notify the child abuse hotline.~~

36           (b)(1) ~~When any individual listed in subdivision (b)(4) of this~~

1 ~~section has reasonable cause to suspect that a child has been subjected to~~  
 2 ~~child maltreatment or has died as a result of child maltreatment or observes~~  
 3 ~~a child being subjected to conditions or circumstances that would reasonably~~  
 4 ~~result in child maltreatment, he or she shall immediately notify the child~~  
 5 ~~abuse hotline by telephone call, facsimile transmission, or online reporting.~~

6 ~~(2) The child abuse hotline shall review the information~~  
 7 ~~received under subdivision (b)(1) of this section to determine if the~~  
 8 ~~information rises to the minimum standards for investigation under this~~  
 9 ~~subchapter.~~

10 ~~(3)(A) Facsimile transmission and online reporting may be used~~  
 11 ~~in nonemergency situations by an identified reporter who provides the~~  
 12 ~~following contact information:~~

13 ~~(i) Name and phone number; and~~

14 ~~(ii) In the case of online reporting, the email~~  
 15 ~~address of the identified reporter.~~

16 ~~(B) The hotline shall provide confirmation of the receipt~~  
 17 ~~of a facsimile transmission via a return facsimile transmission or via online~~  
 18 ~~receipt.~~

19 ~~(C) A mandated reporter who wishes to remain anonymous~~  
 20 ~~shall make the report through the child abuse hotline toll-free telephone~~  
 21 ~~system.~~

22 ~~(4) The following individuals are mandated reporters under this~~  
 23 ~~subsection:~~

24 ~~(A) Any child care worker or foster care worker;~~

25 ~~(B) A coroner;~~

26 ~~(C) A day care center worker;~~

27 ~~(D) A dentist;~~

28 ~~(E) A dental hygienist;~~

29 ~~(F) A domestic abuse advocate;~~

30 ~~(G) A domestic violence shelter employee;~~

31 ~~(H) A domestic violence shelter volunteer;~~

32 ~~(I) An employee of the Department of Human Services;~~

33 ~~(J) An employee working under contract for the Division of~~  
 34 ~~Youth Services of the Department of Human Services;~~

35 ~~(K) Any foster parent;~~

36 ~~(L) A judge;~~

1                   ~~(M)—A law enforcement official;~~  
2                   ~~(N)—A licensed nurse;~~  
3                   ~~(O)—Any medical personnel who may be engaged in the~~  
4 ~~admission, examination, care, or treatment of persons;~~  
5                   ~~(P)—A mental health professional;~~  
6                   ~~(Q)—An osteopath;~~  
7                   ~~(R)—A peace officer;~~  
8                   ~~(S)—A physician;~~  
9                   ~~(T)—A prosecuting attorney;~~  
10                   ~~(U)—A resident intern;~~  
11                   ~~(V)—A school counselor;~~  
12                   ~~(W)—A school official;~~  
13                   ~~(X)—A social worker;~~  
14                   ~~(Y)—A surgeon;~~  
15                   ~~(Z)—A teacher;~~  
16                   ~~(AA)—A court-appointed special advocate program staff~~  
17 ~~member or volunteer;~~  
18                   ~~(BB)—A juvenile intake or probation officer;~~  
19                   ~~(CC)—Any clergy member, which includes a minister, priest,~~  
20 ~~rabbi, accredited Christian Science practitioner, or other similar~~  
21 ~~functionary of a religious organization, or an individual reasonably believed~~  
22 ~~to be so by the person consulting him or her, except to the extent he or she:~~  
23                   ~~(i)—Has acquired knowledge of suspected maltreatment~~  
24 ~~through communications required to be kept confidential pursuant to the~~  
25 ~~religious discipline of the relevant denomination or faith; or~~  
26                   ~~(ii)—Received the knowledge of the suspected~~  
27 ~~maltreatment from the offender in the context of a statement of admission; or~~  
28                   ~~(DD)—An employee of a child advocacy center.~~  
29                   ~~(c)(1)—No privilege or contract shall prevent anyone from reporting~~  
30 ~~child maltreatment when he or she is a mandated reporter as required by this~~  
31 ~~section.~~  
32                   ~~(2)—No school, Head Start program, or day care facility shall~~  
33 ~~prohibit an employee or a volunteer from directly reporting child~~  
34 ~~maltreatment to the child abuse hotline.~~  
35                   ~~(3)—No school, Head Start program, or day care facility shall~~  
36 ~~require an employee or a volunteer to obtain permission or notify any person,~~

1 including an employee or a supervisor, before reporting child maltreatment to  
2 the child abuse hotline.

3 ~~(d)(1) If the child abuse hotline receives notification that a client  
4 or a resident of any facility licensed or registered by the State of Arkansas  
5 has been subjected to child maltreatment while at the facility, then the  
6 Department of Human Services shall immediately notify the facility's  
7 licensing or registering authority of the child abuse hotline's receipt of  
8 initial notification of suspected maltreatment.~~

9 ~~(2) The Department of Human Services may notify a school's  
10 superintendent, principal, or a person in an equivalent position of the child  
11 abuse hotline's receipt of initial notification of suspected maltreatment if:~~

12 ~~(A) The child abuse hotline receives notification that a  
13 public or private school employee or volunteer having direct or unsupervised  
14 contact with children has been identified as an alleged offender in a report  
15 of suspected child maltreatment; and~~

16 ~~(B) The Department of Human Services has determined that  
17 children under the care of the alleged offender appear to be at risk of  
18 maltreatment by the alleged offender.~~

19 ~~(3) The Department of Human Services may notify an alleged  
20 offender's employer or a person in charge of an activity of the child abuse  
21 hotline's receipt of initial notification of suspected maltreatment if:~~

22 ~~(A) The child abuse hotline receives notification that a  
23 report has been received on a person who is engaged in child-related  
24 activities or employment and that person has been named as an alleged  
25 offender; and~~

26 ~~(B) The Department of Human Services has determined that  
27 children under the care of the alleged offender appear to be at risk of  
28 maltreatment by the alleged offender.~~

29 ~~(4) The Department of Human Services shall promulgate rules that  
30 will ensure that notification required under this subsection is specifically  
31 approved by a responsible manager in the Department of Human Services before  
32 the notification is made.~~

33 ~~(e)(1) When a person, agency, corporation, or partnership then  
34 providing substitute care for any child in the custody of the Department of  
35 Human Services or a Department of Human Services employee or employee's  
36 spouse or other person residing in the home is reported as being suspected of~~

1 ~~child maltreatment, the investigation shall be conducted pursuant to~~  
 2 ~~procedures established by the Department of Human Services.~~

3 ~~(2)(A) Such procedures shall include referral of allegations to~~  
 4 ~~the Department of Arkansas State Police and any other appropriate law~~  
 5 ~~enforcement agency should the allegation involve severe maltreatment.~~

6 ~~(B) The Department of Arkansas State Police shall~~  
 7 ~~investigate the allegations.~~

8 ~~(C) The investigating agency shall immediately notify~~  
 9 ~~local law enforcement of all reports of severe maltreatment.~~

10 ~~(f)(1) The child abuse hotline shall accept a report when the~~  
 11 ~~allegations, if true, would constitute child maltreatment as defined in § 12-~~  
 12 ~~12-503 and so long as sufficient identifying information is provided to~~  
 13 ~~identify and locate the child or the family.~~

14 ~~(2) The child abuse hotline shall accept a report of physical~~  
 15 ~~abuse if any of the following intentional or knowing acts are alleged to~~  
 16 ~~occur, but the report shall not be determined to be true unless the child~~  
 17 ~~suffered an injury as the result of the act:~~

18 ~~(A) Throwing, kicking, burning, biting, or cutting a~~  
 19 ~~child;~~

20 ~~(B) Striking a child with a closed fist;~~

21 ~~(C) Shaking a child four (4) years of age or older; or~~

22 ~~(D) Striking a child seven (7) years of age or older on~~  
 23 ~~the face or on the head.~~

24 ~~(3) The child abuse hotline shall accept a report of physical~~  
 25 ~~abuse if any of the following intentional or knowing acts are alleged to~~  
 26 ~~occur:~~

27 ~~(A) Shaking a child three (3) years of age or younger;~~

28 ~~(B) Striking a child six (6) years of age or younger on~~  
 29 ~~the face or on the head;~~

30 ~~(C) Interfering with a child's breathing; or~~

31 ~~(D) Pinching, biting, or striking a child in the genital~~  
 32 ~~area.~~

33 ~~(4)(A) The child abuse hotline shall accept a report of physical~~  
 34 ~~abuse if a child suffers an injury as the result of a restraint.~~

35 ~~(B) The report shall be determined not to be true if the~~  
 36 ~~injury is a minor temporary mark or causes transient pain and was an~~

1 acceptable restraint as provided in § 12-12-503(2)(C)(ii).

2           ~~(5)(A) The child abuse hotline shall accept a report of physical~~  
 3 ~~abuse involving a bruise to a child even if at the time of the report the~~  
 4 ~~bruise is not visible if the bruising occurred:~~

5                           ~~(i) Within the past fourteen (14) days; and~~

6                           ~~(ii) As a result of physical abuse as described in~~  
 7 ~~subdivisions (f)(1)-(4) of this section.~~

8                           ~~(B) However, the report shall not be determined to be true~~  
 9 ~~unless the existence of the bruise is corroborated.~~

10           ~~(6) The child abuse hotline shall accept a report of neglect as~~  
 11 ~~defined under § 12-12-503(12)(B) only if the reporter is one (1) of the~~  
 12 ~~following mandatory reporters and the reporter has reasonable cause to~~  
 13 ~~suspect that a child has been subjected to neglect as defined under § 12-12-~~  
 14 ~~503(12)(B):~~

15                           ~~(A) A licensed nurse;~~

16                           ~~(B) Any medical personnel who may be engaged in the~~  
 17 ~~admission, examination, care, or treatment of persons;~~

18                           ~~(C) An osteopath;~~

19                           ~~(D) A physician;~~

20                           ~~(E) A resident intern;~~

21                           ~~(F) A surgeon; or~~

22                           ~~(G) A social worker in a hospital.~~

23           ~~(7) The child abuse hotline shall accept a report of child~~  
 24 ~~maltreatment naming an adult as the victim only if:~~

25                           ~~(A) The alleged offender is a caretaker of a child; and~~

26                           ~~(B) The person making the report is one (1) of the~~  
 27 ~~following:~~

28                                   ~~(i) The adult victim;~~

29                                   ~~(ii) A law enforcement officer;~~

30                                   ~~(iii) The adult victim's counselor or therapist;~~

31                                   ~~(iv) The alleged offender's counselor or therapist;~~

32 ~~or~~

33                                   ~~(v) The alleged offender.~~

34           ~~(g)(1) The child abuse hotline shall accept a report if the child or~~  
 35 ~~the child's family is present in Arkansas or the incident occurred in~~  
 36 ~~Arkansas.~~

1           ~~(2) If the child or the child's family resides in another state,~~  
2 ~~the child abuse hotline shall screen out the report, transfer the report to~~  
3 ~~the child abuse hotline of the state where the child or the child's family~~  
4 ~~resides or the incident occurred, and, if requested by the other state's~~  
5 ~~investigating agency, send a copy to the appropriate investigating agency in~~  
6 ~~Arkansas to initiate interviews.~~

7           ~~(3) If the incident occurred in Arkansas and the victim,~~  
8 ~~offender, or parents no longer reside in Arkansas, the child abuse hotline~~  
9 ~~shall accept the report and the Arkansas investigating agency shall contact~~  
10 ~~the other state and request assistance in completing the investigation,~~  
11 ~~including an interview with the out-of-state subject of the report.~~

12           ~~(4)(A) If the child abuse hotline receives a report and the~~  
13 ~~alleged offender is a resident of the State of Arkansas and the report of~~  
14 ~~child maltreatment in the state or country in which the act occurred would~~  
15 ~~also be child maltreatment in Arkansas at the time the incident occurred, the~~  
16 ~~child abuse hotline shall refer the report to the appropriate investigating~~  
17 ~~agency within the state so that the Arkansas investigative agency can~~  
18 ~~investigate, alone or in concert with, the investigative agency of any other~~  
19 ~~state or country that may be involved.~~

20           ~~(B) The Arkansas investigating agency shall make an~~  
21 ~~investigative determination and shall provide notice to the alleged offender~~  
22 ~~that, if the allegation is determined to be true, the offender's name will be~~  
23 ~~placed in the central registry.~~

24           ~~(C) The other state may also conduct an investigation in~~  
25 ~~this state that results in the offender's being named in a true report in~~  
26 ~~that state and placed in the central registry of that state.~~

27           ~~(h) The child abuse hotline shall accept telephone calls or other~~  
28 ~~communications alleging that a child is dependent neglected, as defined in §~~  
29 ~~9-27-303(17), and shall immediately refer this information to the Department~~  
30 ~~of Human Services.~~

31  
32           ~~12-12-508. Radiology procedures, photographs, and medical records.~~

33           ~~(a) Any person who is required to make notification under this~~  
34 ~~subchapter may take or cause to be taken radiology procedures and photographs~~  
35 ~~or compile medical records that may be probative as to the existence or~~  
36 ~~extent of child maltreatment.~~



1           ~~(b) Hospitals and clinics may make videotapes that may be probative as~~  
2 ~~to the existence or extent of child maltreatment.~~

3           ~~(c) The Department of Human Services or law enforcement officials~~  
4 ~~shall be provided a copy of the results of radiology procedures, videotapes,~~  
5 ~~photographs, or medical records upon request.~~

6           ~~(d) The department and law enforcement officials shall be allowed~~  
7 ~~access to the child's public and private school records during the course of~~  
8 ~~the child maltreatment investigation.~~

9  
10           ~~12-12-509. Investigation—Examinations of children.~~

11           ~~(a)(1) The Department of Human Services shall cause an investigation~~  
12 ~~to be made upon receiving initial notification of suspected child~~  
13 ~~maltreatment.~~

14                   ~~(2)(A) All investigations shall begin within seventy two (72)~~  
15 ~~hours.~~

16                           ~~(B) However, the investigation shall begin within twenty-~~  
17 ~~four (24) hours if:~~

18                                   ~~(i) The allegation is severe maltreatment, excluding~~  
19 ~~an allegation of sexual abuse if the most recent allegation of sexual abuse~~  
20 ~~was more than one (1) year ago and the alleged victim does not currently have~~  
21 ~~contact with the alleged offender; or~~

22                                   ~~(ii) The allegation is that a child has been~~  
23 ~~subjected to neglect as defined in § 12-12-503(12)(B).~~

24                           ~~(C) Notification of any report of child maltreatment will~~  
25 ~~be provided within five (5) business days to the:~~

26                                   ~~(i) Legal parents of any child in foster care who is~~  
27 ~~named as an alleged victim or offender;~~

28                                   ~~(ii) Attorney ad litem of any foster child named as~~  
29 ~~the victim or offender;~~

30                                   ~~(iii) Attorney ad litem of all other children in the~~  
31 ~~same foster home if the maltreatment occurred in the foster home; and~~

32                                   ~~(iv) The prosecuting attorney on an allegation of~~  
33 ~~severe maltreatment.~~

34                           ~~(D) At the initial time of contact with the alleged~~  
35 ~~offender, the investigator shall advise the alleged offender of the~~  
36 ~~allegations made against the alleged offender in a manner that is consistent~~

1 with the laws protecting the rights of the person who made the report.

2           (E) Upon initiation of the investigation, the primary  
3 focus of the investigation shall be whether or not the alleged offender has  
4 access to children and whether or not children are at risk such that children  
5 need to be protected.

6           (3)(A) The prosecuting attorney may provide written notice to  
7 the Department of Human Services that the Department of Human Services does  
8 not need to provide notification of the initial maltreatment report to the  
9 prosecuting attorney's office.

10           (B) Upon receiving the notification, the Department of  
11 Human Services shall not be required to provide notification of the initial  
12 maltreatment report to the prosecuting attorney's office.

13           (b)(1) If the alleged offender is a family member or lives in the home  
14 with the alleged victim, the investigation shall seek to ascertain:

15           (A) The existence, cause, nature, and extent of the child  
16 maltreatment;

17           (B) The existence and extent of previous injuries;

18           (C) The identity of the person responsible for the  
19 maltreatment;

20           (D) The names and conditions of other children in the  
21 home;

22           (E) The circumstances of the parents or caretakers of the  
23 child;

24           (F) The environment where the child resides;

25           (G) The relationship of the child or children with the  
26 parents or caretakers; and

27           (H) All other pertinent data.

28           (2) If the alleged offender is not a family member nor living in  
29 the home with the alleged victim, the investigation shall seek to ascertain:

30           (A) The existence, cause, nature, and extent of the  
31 child's maltreatment;

32           (B) The identity of the person responsible for the  
33 maltreatment;

34           (C) The existence and extent of previous maltreatment  
35 perpetrated by the alleged offender;

36           (D) If the report is determined to be true, the names and

1 conditions of any minor children of the alleged offender and whether these  
2 children have been maltreated or are at risk of maltreatment;

3 (E) If the report is determined to be true and is a report  
4 of sexual intercourse, deviate sexual activity, or sexual contact, an  
5 assessment of any other children previously or currently under the care of  
6 the alleged offender, to the extent practical, and whether these children  
7 have been maltreated or are at risk of maltreatment; and

8 (F) All other pertinent and relevant data.

9 (c)(1)(A) The investigation shall include interviews with the parents,  
10 both custodial and noncustodial.

11 (B) If neither parent is the alleged offender, the  
12 investigation shall also include an interview with the alleged offender.

13 (C) The investigation shall include an interview with any  
14 other relevant persons.

15 (2)(A) The investigation shall include an interview with the  
16 child separate and apart from the alleged offender or any representative or  
17 attorney for the alleged offender.

18 (B) However, if the age or abilities of the child render  
19 an interview impossible, the investigation shall include observation of the  
20 child.

21 (3) The investigation may include a physical examination, a drug  
22 test, radiology procedures, photographs, and a psychological or psychiatric  
23 examination of all children subject to the care, custody, or control of the  
24 alleged offender.

25 (4) If, after exercising reasonable diligence in conducting any  
26 or all interviews, the subjects of the interviews cannot be located or are  
27 unable to communicate, the efforts to conduct such interviews shall be  
28 documented and the investigation shall proceed pursuant to this subchapter.

29 (d)(1) An investigative determination shall be made in each  
30 investigation within thirty (30) days regardless of whether the investigation  
31 is conducted by the Department of Human Services, the Crimes Against Children  
32 Division of the Department of Arkansas State Police, or local law  
33 enforcement.

34 (2) However, this procedural requirement shall not be considered  
35 as a factor to alter the investigative determination in any judicial or  
36 administrative proceeding.

1           ~~(3) An investigation involving an out-of-home alleged offender~~  
2 ~~that is determined to be true may be extended up to thirty (30) additional~~  
3 ~~days to allow an investigator to ascertain;~~

4           ~~(A) The names and conditions of any minor children of the~~  
5 ~~alleged offender;~~

6           ~~(B) Whether minor children of the alleged offender have~~  
7 ~~been maltreated or are at risk of maltreatment; and~~

8           ~~(C) To the extent practicable, whether children previously~~  
9 ~~or currently under the care of the alleged offender have been sexually abused~~  
10 ~~or are at risk of sexual abuse.~~

11           ~~(4) No investigation shall be transferred to inactive status~~  
12 ~~because an investigator is awaiting documentary evidence.~~

13  
14       ~~12-12-510. Investigative powers.~~

15       ~~(a)(1) A person conducting an investigation required by this~~  
16 ~~subchapter shall have the right to enter into or upon a home, school, or any~~  
17 ~~other place for the purpose of conducting the investigation and interviewing~~  
18 ~~or completing the investigation.~~

19       ~~(2)(A) No publicly supported school, facility, or institution~~  
20 ~~may deny access to any person conducting a child maltreatment investigation.~~

21       ~~(B) Failure to comply with this section may subject the~~  
22 ~~publicly supported school, facility, or institution to a contempt sanction~~  
23 ~~and reimbursement of attorney's fees.~~

24       ~~(b) If necessary access or admission is denied, the Department of~~  
25 ~~Human Services may petition the proper juvenile division of circuit court for~~  
26 ~~an ex parte order of investigation requiring the parent, caretaker, or~~  
27 ~~persons denying access to any place where the child may be to allow entrance~~  
28 ~~for the interviews, examinations, and investigations.~~

29       ~~(c) However, upon application to the court by the parents, caretaker,~~  
30 ~~or persons denying access to the child showing good cause, the court may~~  
31 ~~issue a written order to stay the order of investigation pending a hearing to~~  
32 ~~be held within seventy two (72) hours.~~

33       ~~(d) The department shall investigate all allegations of child~~  
34 ~~maltreatment without regard to the parent's practice of his or her religious~~  
35 ~~beliefs and shall only consider whether the acts or omissions of the parent~~  
36 ~~are abusive or neglectful as defined by the Arkansas Code.~~

1           ~~(e) The person conducting the investigation shall have the right to~~  
2 ~~inspect personnel records of employees and volunteers in any place where an~~  
3 ~~allegation of child maltreatment has been reported as having occurred at that~~  
4 ~~place but the alleged offender is unknown.~~

5           ~~(f) The investigator shall have the discretion in the child's best~~  
6 ~~interest to limit the persons allowed to be present when a child is being~~  
7 ~~interviewed concerning allegations of child maltreatment.~~

8           ~~(g) Upon request by the investigating agency, any school, day care~~  
9 ~~center, child care facility, residential facility, residential treatment~~  
10 ~~facility, or similar institution shall provide the investigator with:~~

11                 ~~(1) The name, date of birth, social security number, and last~~  
12 ~~known address and phone number of any person identified as an alleged~~  
13 ~~offender if the alleged maltreatment occurred at that school, center, or~~  
14 ~~facility; and~~

15                 ~~(2) The name and address of any witness to the alleged~~  
16 ~~maltreatment if the alleged maltreatment occurred at that school, center, or~~  
17 ~~facility.~~

18           ~~(h)(1) The person conducting the investigation shall have the right to~~  
19 ~~obtain a criminal background check, including a fingerprint based check in~~  
20 ~~any national crime information database, on any subject of the report.~~

21                 ~~(2) The results of the criminal background check shall not be~~  
22 ~~disclosed outside of the department except as permitted under § 12-12-506.~~

23  
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 any child, and the alleged~~  
27 ~~victim has attained majority prior to notification, the child maltreatment~~  
28 ~~investigation shall be closed notwithstanding any criminal investigation.~~

29           ~~(b)(1) Notwithstanding any provision of the Arkansas Rules of~~  
30 ~~Evidence, any privilege between a minister and any person confessing to or~~  
31 ~~being counseled by the minister shall not constitute grounds for excluding~~  
32 ~~evidence at any dependency neglect proceeding or proceedings involving~~  
33 ~~custody of a minor.~~

34           ~~(2) If at any time before or during the investigation it appears~~  
35 ~~that the offender is identified and is not a caretaker of the victim child,~~  
36 ~~excluding investigations of sexual abuse, the Department of Human Services~~

1 ~~shall;~~

2 ~~(A) Refer the matter to the appropriate law enforcement~~  
3 ~~agency;~~

4 ~~(B) Close its investigation; and~~

5 ~~(C) Forward a copy of its findings to the appropriate law~~  
6 ~~enforcement agency for that agency's further use in any criminal~~  
7 ~~investigation.~~

8 ~~(3)(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.~~

14 ~~(c) If at any time before or during the investigation the department~~  
15 ~~is unable to locate or identify the alleged offender because the alleged~~  
16 ~~maltreatment occurred more than five (5) years ago or in another state, the~~  
17 ~~department shall consider the report unable to be completed and placed in~~  
18 ~~inactive status.~~

19  
20 ~~12-12-512. Child maltreatment investigative determination—Notice of~~  
21 ~~finding—Amendment and appeal.~~

22 ~~(a) Upon completion of the investigation, the Department of Human~~  
23 ~~Services shall determine that the allegations of child maltreatment are:~~

24 ~~(1)(A)(i) Unsubstantiated.~~

25 ~~(ii) This determination shall be entered when the~~  
26 ~~allegation is not supported by a preponderance of the evidence.~~

27 ~~(B)(i) An unsubstantiated report, including protected~~  
28 ~~health information, shall be confidential and shall be disclosed only to:~~

29 ~~(a) The prosecutor;~~

30 ~~(b) A subject of the report;~~

31 ~~(c) A court if the information in the record~~  
32 ~~is necessary for a determination of an issue before the court;~~

33 ~~(d) Individual federal and state senators and~~  
34 ~~representatives and their staff members in their official capacities, but no~~  
35 ~~disclosure may be made to any committee or legislative body;~~

36 ~~(e) Law enforcement agencies;~~

1 ~~(f) Any appropriate licensing or registering~~  
2 ~~authority;~~

3 ~~(g) Adult protective services; and~~

4 ~~(h) The Division of Developmental Disabilities~~  
5 ~~Services and the Division of Aging and Adult Services as to participants of~~  
6 ~~the waiver program.~~

7 ~~(ii) Any person or agency to which disclosure is~~  
8 ~~made shall not disclose to any other person a report or other information~~  
9 ~~obtained pursuant to subdivision (a)(1)(B)(i) of this section; or~~

10 ~~(2)(A)(i) True.~~

11 ~~(ii)(a) A true determination shall be entered when~~  
12 ~~the allegation is supported by a preponderance of the evidence.~~

13 ~~(b) However, for any act or omission of~~  
14 ~~maltreatment which would be a criminal offense or an act of delinquency, any~~  
15 ~~defense or affirmative defense that would be applicable to the criminal~~  
16 ~~offense or delinquent act is also cognizable in a maltreatment proceeding.~~

17 ~~(B) A determination of true but exempted, which means that~~  
18 ~~the offender's name shall not be placed in the central registry, shall be~~  
19 ~~entered if:~~

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

25 ~~(ii) The offender is an underaged juvenile~~  
26 ~~aggressor; or~~

27 ~~(iii) The report was founded for neglect as defined~~  
28 ~~in § 12-12-503(12)(B).~~

29 ~~(C)(i) Notwithstanding subdivision (a)(2)(A)(i) of this~~  
30 ~~section, the department may pursue:~~

31 ~~(a) Any legal remedies, including the~~  
32 ~~authority to initiate legal proceedings in a court of competent jurisdiction;~~  
33 ~~and~~

34 ~~(b) Medical care or treatment for a child when~~  
35 ~~such care or treatment is necessary to prevent or remedy serious harm to the~~  
36 ~~child or to prevent the withholding of medically indicated treatment from a~~

1 ~~child with life-threatening conditions.~~

2 ~~(ii) Except with respect to the withholding of~~  
 3 ~~medically indicated treatments from a disabled infant with life-threatening~~  
 4 ~~conditions, case-by-case determinations concerning the exercise of authority~~  
 5 ~~in this subsection shall be within the sole discretion of the department.~~

6 ~~(b) If the investigation cannot be completed, the investigation shall~~  
 7 ~~be determined incomplete and placed in inactive status.~~

8 ~~(c)(1)(A)(i) In every case in which a report is determined to be true,~~  
 9 ~~the department shall notify each subject of the report of the determination.~~

10 ~~(ii) If the offender is a juvenile ten (10) years of~~  
 11 ~~age or older and is in foster care, the department shall notify the~~  
 12 ~~juvenile's public defender or counsel for the juvenile and the legal parents~~  
 13 ~~or legal guardians of the offender.~~

14 ~~(iii) If the offender is a juvenile ten (10) years~~  
 15 ~~of age or older, the department shall notify the legal parents or legal~~  
 16 ~~guardians of the offender.~~

17 ~~(B) Notification shall be in writing by certified mail,~~  
 18 ~~restricted delivery, or by a process server.~~

19 ~~(C) Notification to an offender who was an adult at the~~  
 20 ~~time of the act or omission that resulted in the finding of child~~  
 21 ~~maltreatment shall include the following:~~

22 ~~(i) The investigative determination, true or~~  
 23 ~~unsubstantiated, exclusive of the source of the notification;~~

24 ~~(ii) A statement that the person named as the~~  
 25 ~~offender of the true report may request an administrative hearing and the~~  
 26 ~~potential consequences to the person as a result of the person's name being~~  
 27 ~~placed on the central registry;~~

28 ~~(iii) A statement that the request must be made to~~  
 29 ~~the department within thirty (30) days of receipt of the service or certified~~  
 30 ~~mailing of the notice of determination;~~

31 ~~(iv) The name of the person making notification, the~~  
 32 ~~person's occupation, and where he or she can be reached; and~~

33 ~~(v) A statement that the administrative hearing may~~  
 34 ~~take place in person if requested by the petitioner or the petitioner's~~  
 35 ~~attorney within thirty (30) days from the date that the petitioner receives~~  
 36 ~~notification under this subsection (c), provided that the hearing officer may~~



1 ~~conduct the hearing by video teleconference in lieu of an in-person hearing.~~  
2 ~~If neither party requests that the hearing be conducted in person, then the~~  
3 ~~hearing shall be conducted telephonically.~~

4 ~~(D)—Notification to an offender who was a juvenile ten~~  
5 ~~(10) years of age or older at the time of the act or omission that resulted~~  
6 ~~in the finding of child maltreatment shall include the following:~~

7 ~~(i)—The investigative determination, true or~~  
8 ~~unsubstantiated, exclusive of the source of the notification;~~

9 ~~(ii)—A statement that the matter has been referred~~  
10 ~~for an automatic administrative hearing that may only be waived by the~~  
11 ~~juvenile offender or his or her parent in writing; and~~

12 ~~(iii)—The name of the person making the notification~~  
13 ~~to the juvenile offender, the person's occupation, and where he or she can be~~  
14 ~~reached.~~

15 ~~(2)—The administrative hearing process must be completed within~~  
16 ~~one hundred eighty (180) days from the date of the receipt of the request for~~  
17 ~~a hearing, or the petitioner's name shall be removed from the central~~  
18 ~~registry, provided that:~~

19 ~~(A)—Delays in completing the hearing that are attributable~~  
20 ~~to the petitioner shall not count against the one hundred eighty-day limit;~~  
21 ~~and~~

22 ~~(B)(i)—The one hundred eighty-day limit shall not apply if~~  
23 ~~there is an ongoing criminal or delinquency investigation or criminal or~~  
24 ~~delinquency charges have been filed or will be filed regarding the occurrence~~  
25 ~~that is the subject of the child maltreatment report.~~

26 ~~(ii)—In those cases, the administrative hearing~~  
27 ~~shall be stayed pending final disposition of the criminal or delinquency~~  
28 ~~proceedings.~~

29 ~~(iii)—It shall be the duty of the petitioner to~~  
30 ~~report the final disposition of the criminal or delinquency proceeding to the~~  
31 ~~department.~~

32 ~~(iv)—Each report shall include a file marked copy of~~  
33 ~~the criminal or delinquency disposition.~~

34 ~~(v)—The request for an administrative hearing shall~~  
35 ~~be deemed waived if the petitioner fails to report the disposition of the~~  
36 ~~criminal or delinquency proceedings within thirty (30) days of the entry of a~~

1 ~~dispositive judgment or order.~~

2 ~~(vi) If the criminal or delinquency proceedings have~~  
3 ~~reached no final outcome within twelve (12) months of the filing of the~~  
4 ~~administrative appeal, the administrative appeal will be deemed waived if the~~  
5 ~~petitioner fails to provide a written statement of the status of the criminal~~  
6 ~~or delinquency proceedings every sixty (60) days and a disposition report~~  
7 ~~within thirty (30) days of the entry of a dispositive judgment or order.~~

8 ~~(3) When the department conducts administrative appeal hearings,~~  
9 ~~the chief counsel of the department may require the attendance of witnesses~~  
10 ~~and the production of books, records, or other documents through the issuance~~  
11 ~~of subpoenas when that testimony or information is necessary to adequately~~  
12 ~~present the position of the department, the investigating protective services~~  
13 ~~agency, or the alleged offender or adult subject of a report.~~

14 ~~(4) Upon request by a petitioner, if the petitioner prevails at~~  
15 ~~an administrative hearing or a circuit court hearing and a report is changed~~  
16 ~~from true to unsubstantiated, the department shall tender a list of persons~~  
17 ~~to whom a disclosure had previously been made that the report was true.~~

18 ~~(5)(A) If a petitioner's name is removed from the central~~  
19 ~~registry as a result of a failure to comply with this subsection (c), then~~  
20 ~~the department shall report any failures to comply with this subsection (c)~~  
21 ~~for each quarter to the House Interim Committee on Aging, Children and Youth,~~  
22 ~~Legislative and Military Affairs and the Senate Interim Committee on Children~~  
23 ~~and Youth.~~

24 ~~(B) The quarterly report to the House Interim Committee on~~  
25 ~~Aging, Children and Youth, Legislative and Military Affairs and the Senate~~  
26 ~~Interim Committee on Children and Youth shall include a written explanation~~  
27 ~~of the failure of the department.~~

28 ~~(d) Failure to obey the subpoena may be deemed a contempt, punishable~~  
29 ~~accordingly.~~

30 ~~(e) Administrative hearing decisions and all exhibits submitted at the~~  
31 ~~hearing are confidential and may be used or disclosed only as provided in §~~  
32 ~~12-12-506(a)(2)(A).~~

33 ~~(f)(1) The Office of Appeals and Hearings of the Department of Human~~  
34 ~~Services shall designate the sites to be used for video teleconference~~  
35 ~~hearings.~~

36 ~~(2) The office shall designate sites within ten (10) miles of~~

1 ~~the following cities:~~

2 ~~(A)—Arkadelphia;~~

3 ~~(B)—Booneville;~~

4 ~~(C)—Conway;~~

5 ~~(D)—Fayetteville;~~

6 ~~(E)—Jonesboro;~~

7 ~~(F)—Little Rock; or~~

8 ~~(G)—Warren.~~

9 ~~(3)—The office may designate additional sites for video~~  
 10 ~~teleconference hearings.~~

11 ~~(g)(1)—If any party requests an in person hearing within thirty (30)~~  
 12 ~~days from the date that the party receives notification under subsection (c)~~  
 13 ~~of this section, then the in person hearing shall be conducted in an office~~  
 14 ~~of the department nearest to the petitioner's residence unless the hearing~~  
 15 ~~officer notifies the parties that the hearing will be conducted via video~~  
 16 ~~teleconference.~~

17 ~~(2)—A site for a video teleconference hearing shall include the~~  
 18 ~~location designated by the office that is nearest to the petitioner's~~  
 19 ~~residence.~~

20 ~~(3)—The hearing officer and other parties may agree to appear at~~  
 21 ~~the location designated by the office or at any other designated hearing~~  
 22 ~~locations that are convenient to them.~~

23 ~~(h)(1)—A certified copy of a judgment or an adjudication from a court~~  
 24 ~~of competent jurisdiction dealing with the same subject matter as an issue~~  
 25 ~~concerned in the administrative hearing may be filed with and considered by~~  
 26 ~~the hearing officer.~~

27 ~~(2)(A)—A decision on any identical issue shall be rendered~~  
 28 ~~without a hearing.~~

29 ~~(B)—However, if the judgment or adjudication of the court~~  
 30 ~~is reversed or vacated and notice of the reversal or vacation is provided to~~  
 31 ~~the department, the department shall set the matter for a hearing.~~  
 32 ~~(i)(1)—The department shall notify the hearing officer and the respondent of the status~~  
 33 ~~of any juvenile division of circuit court proceeding involving the victim if~~  
 34 ~~child maltreatment at issue in the administrative hearing proceeding is also~~  
 35 ~~an issue in the juvenile division of circuit court proceeding.~~

36 ~~(2)—Notice from the department under subdivision (i)(1) of this~~

~~section shall also include whether the department exercised a seventy-two-hour hold on the victim and released the child, or if the department or division of circuit court dismissed a petition for emergency custody or dependency neglect.~~

~~12-12-513. Requests for subpoenas — Form.~~

~~(a) Requests for subpoenas shall be granted by the chief counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.~~

~~(b) Subpoenas issued pursuant to the authority of the chief counsel of the department shall be substantially in the following form:~~

~~“The State of Arkansas to the Sheriff of \_\_\_\_\_ County: You are commanded to subpoena (name) \_\_\_\_\_, (address) \_\_\_\_\_, to attend a proceeding before the Department of Human Services to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., and testify and/or produce the following books, records, or other documents, to wit: \_\_\_\_\_ in a matter of (style of proceeding) \_\_\_\_\_ to be conducted under the authority of \_\_\_\_\_. WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

~~Chief Counsel or designee, Department of Human Services”~~

~~(c)(1) Subpoenas provided for in this section shall be served in the manner as now provided by law, and returned and a copy made and kept by the department.~~

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

~~(d) Witnesses duly served with subpoenas issued pursuant to the authority provided in this section who shall refuse to testify or give~~

1 evidence may be cited on affidavit through application of the chief counsel  
 2 of the department to the Pulaski County Circuit Court or any circuit court of  
 3 the state where the subpoenas were served.

4 (e) Failure to obey the subpoena may be deemed a contempt, punishable  
 5 accordingly.

6  
 7 ~~12-12-514. Child maltreatment investigative report.~~

8 (a) The agency responsible for the investigation shall make a complete  
 9 written report of the investigation by the conclusion of the thirty-day time  
 10 period set forth in § 12-12-509(d) of this subchapter.

11 (b) The report shall include the following information:

12 (1) The names and addresses of the child and his or her legal  
 13 parents and other caretakers of the child, if known;

14 (2) The child's age, sex, and race;

15 (3) The nature and extent of the child's present and past  
 16 injuries;

17 (4) The investigative determination;

18 (5) The nature and extent of the child maltreatment, including  
 19 any evidence of previous injuries or child maltreatment to the child or his  
 20 or her siblings;

21 (6) The name and address of the person responsible for the  
 22 injuries or child maltreatment, if known;

23 (7) Services offered and accepted;

24 (8) Family composition;

25 (9) The source of the notification; and

26 (10) The person making the notification, his or her occupation,  
 27 and where he or she can be reached.

28 (c)(1)(A) A copy of the written report and any supporting  
 29 documentation, including statements from witnesses and transcripts of  
 30 interviews, shall immediately be filed at no cost with the central registry.

31 (B) All information gathered during the course of the  
 32 investigation shall be contained in the file of the Department of Human  
 33 Services whether or not the information supports the investigative  
 34 determination.

35 (2)(A) Notification of the investigative determination shall be  
 36 provided to the appropriate law enforcement agency and prosecuting attorney's

1 ~~office regarding reports of severe maltreatment.~~

2 ~~(B) Notification of the investigative determination shall~~  
 3 ~~be provided to any appropriate licensing or registering authorities.~~

4 ~~(3) If the investigative determination is true and the victim or~~  
 5 ~~offender is in foster care, notification of the investigative determination~~  
 6 ~~shall be provided to the juvenile division of circuit court, the juvenile~~  
 7 ~~division court-appointed attorneys ad litem of the victim and offender,~~  
 8 ~~court-appointed special advocates if appointed in an open dependency neglect~~  
 9 ~~case, and the legal parents of the victim or offender who is in foster care.~~

10 ~~(d) Notwithstanding any provision of this subchapter, the department~~  
 11 ~~shall forward the investigative determination, exclusive of the source of the~~  
 12 ~~notification, the name of the person making notification, the person's~~  
 13 ~~occupation, and where he or she can be reached, to the parents and alleged~~  
 14 ~~offender by a process server or by certified mail, restricted delivery,~~  
 15 ~~addressed to the recipient's last known address.~~

16 ~~(e) The report, exclusive of information identifying the person making~~  
 17 ~~the notification, shall be admissible in evidence in any proceeding related~~  
 18 ~~to child maltreatment.~~

19  
 20 ~~12-12-515. Provision of information to person or agency making initial~~  
 21 ~~notification of suspected maltreatment.~~

22 ~~:(a)(1) If the person or agency making the initial notification of~~  
 23 ~~suspected child maltreatment is required to do so by this subchapter, the~~  
 24 ~~Department of Human Services, within ten (10) business days of the child~~  
 25 ~~maltreatment investigative determination, shall provide to the person the~~  
 26 ~~following information:~~

27 ~~(A) The investigative determination; and~~

28 ~~(B) Services offered and provided.~~

29 ~~(2)(A) The department shall provide the local educational~~  
 30 ~~agency, specifically the school counselor where the maltreated child attends~~  
 31 ~~school, a report including the name and relationship of the offender to the~~  
 32 ~~maltreated child and indicating the department's founded investigative~~  
 33 ~~determination regarding the child and the services offered or provided by the~~  
 34 ~~department to the child.~~

35 ~~(B) The department shall also provide the local~~  
 36 ~~educational agency, specifically the school counselor, a report indicating~~

1 the department's founded investigative determination on any juvenile age ten  
 2 (10) or older who is named as the offender in a true report and the services  
 3 offered or provided by the department to the juvenile offender.

4 (3) Any local educational agency receiving such information from  
 5 the department shall make this information, if it is a true report,  
 6 confidential and a part of the child's permanent educational record and shall  
 7 treat such information as educational records are treated under the Family  
 8 Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

9 (b)(1) The department may provide information to a person or agency  
 10 that provides services such as medical examination of, an assessment  
 11 interview with, or diagnosing, caring for, treating, or supervising a victim  
 12 of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

13 (2) This information may include:

14 (A) The investigative determination or the investigation  
 15 report; and

16 (B) The services offered and provided.

17  
 18 12-12-516. Protective custody of children.

19 (a)(1) A police officer, a law enforcement official, a juvenile  
 20 division of circuit court judge during juvenile proceedings concerning the  
 21 child or a sibling of the child, or a designated employee of the Department  
 22 of Human Services may take a child into protective custody or any person in  
 23 charge of a hospital or similar institution or any physician treating a child  
 24 may keep that child in his or her custody without the consent of the parent  
 25 or the guardian, whether or not additional medical treatment is required, if  
 26 the:

27 (A) Child is subjected to neglect as defined under § 12-  
 28 12-503(12)(B) and the department assesses the family and determines that the  
 29 newborn and any other children, including siblings, under the custody or care  
 30 of the mother are at substantial risk of serious harm such that the children  
 31 need to be removed from the custody or care of the mother;

32 (B) Child is dependent as defined in the Arkansas Juvenile  
 33 Code of 1989, § 9-27-301 et seq.; or

34 (C) Circumstances or conditions of the child are such that  
 35 continuing in his or her place of residence or in the care and custody of the  
 36 parent, guardian, custodian, or caretaker presents an immediate danger of

1 ~~severe maltreatment.~~

2 ~~(2) However, such custody shall not exceed seventy two (72)~~  
3 ~~hours except in the event that the expiration of seventy two (72) hours falls~~  
4 ~~on a weekend or holiday, in which case protective custody may be extended~~  
5 ~~through the next business day following the weekend or holiday.~~

6 ~~(3) A sheriff or chief of police may place a child in a~~  
7 ~~department foster home if:~~

8 ~~(A) The sheriff or chief of police contacts the on-call~~  
9 ~~worker for the department and does not get a return phone call within thirty~~  
10 ~~(30) minutes;~~

11 ~~(B) The sheriff or chief of police contacts the~~  
12 ~~department Emergency Notification Line and does not get a return phone call~~  
13 ~~within fifteen (15) minutes;~~

14 ~~(C) The foster parent is personally well known to the~~  
15 ~~sheriff or the chief of police;~~

16 ~~(D) The sheriff or chief of police has:~~

17 ~~(i) Determined that the foster parent's home is safe~~  
18 ~~and provides adequate accommodations for the child; and~~

19 ~~(ii) Performed a criminal record and child~~  
20 ~~maltreatment check on the foster parent as required under § 9-28-409; and~~

21 ~~(E) On the next business day, the sheriff or chief of~~  
22 ~~police immediately notifies the department of the time and date that the~~  
23 ~~child was placed in the foster parent's home.~~

24 ~~(b) The individual taking the child into protective custody may give~~  
25 ~~effective consent for medical, dental, health, and hospital services during~~  
26 ~~protective custody.~~

27 ~~(c) In any case in which protective custody is invoked, the individual~~  
28 ~~taking the child into protective custody shall notify the department in order~~  
29 ~~that a child protective proceeding may be initiated within the time specified~~  
30 ~~in this section.~~

31 ~~(d) The department or prosecuting attorney may file a petition in the~~  
32 ~~appropriate court seeking imposition of penalties for violation of this~~  
33 ~~subchapter.~~

34 ~~(e) A school, residential facility, hospital, and any other place that~~  
35 ~~a child may be located shall not require a written court order for the~~  
36 ~~department to take a seventy two hour hold under this section or § 9-27-313.~~



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~~12-12-517.—Liability.~~

~~(a)—Any person or agency required to participate and acting in good faith in making notification, the taking of a photograph or radiological test, or the removal of a child while exercising protective services shall be immune to suit and to liability, both civil and criminal.~~

~~(b)—If acting in good faith, all persons making notification not named in this section shall be immune from liability.~~

~~(c)—Any publicly supported school, facility, or institution acting in good faith pursuant to § 12-12-510(a)(1)(2) shall be immune from liability.~~

~~12-12-518.—Privileged communications as evidence—Exception.~~

~~(a)—It is the public policy of the State of Arkansas to protect the health, safety, and the welfare of minors within the state.~~

~~(b)(1)—No privilege, except that between a lawyer and client or between a minister, including a Christian Science practitioner, and any person confessing to or being counseled by the minister, shall prevent anyone from testifying concerning child maltreatment.~~

~~(2)—When any physician, psychologist, psychiatrist, or licensed counselor or therapist conducts interviews with or provides therapy to any subject of a report of suspected child maltreatment for purposes related to child maltreatment, the physician, psychologist, psychiatrist, or licensed counselor or therapist shall be deemed to be performing services on behalf of the child.~~

~~(3)—Adult subjects of a report of suspected child maltreatment cannot invoke privilege on the child's behalf.~~

~~(4)—Transcripts of testimony introduced in a child maltreatment proceeding pursuant to this section shall not be received into evidence in any other civil or criminal proceeding.~~

~~12-12-519.—Custody of children and services to families.~~

~~(a)(1)—During the course of any child maltreatment investigation, whether conducted by the Department of Human Services, the Department of Arkansas State Police, or local law enforcement, the Department of Human Services shall assess whether or not the child can safely remain in the home.~~

~~(2)—The child's health and safety shall be the paramount concern~~

1 in determining whether or not to remove a child from the custody of his or  
2 her parents.

3 (b)(1)(A) — If an investigation determines that the child cannot safely  
4 remain at home, the Department of Human Services shall take steps to remove  
5 the child under protective custody as outlined in § 12-12-516 or pursuant to  
6 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

7 (B) — After the Department of Human Services has removed the  
8 child, the child shall be placed in a licensed or approved foster home,  
9 shelter, or facility, or an exempt child welfare agency as defined at § 9-28-  
10 402(12).

11 (C) — No one, including the family, the Department of Human  
12 Services, the Department of Arkansas State Police, or local law enforcement  
13 shall allow the child to be placed in a nonapproved or nonlicensed foster  
14 home, shelter, or facility.

15 (2) — If an investigation determines that the child can safely  
16 remain at home, the parents retain the right to keep the child at home or to  
17 place the child outside the home.

18 (c)(1) — If the child maltreatment investigation is determined to be  
19 true, the Department of Human Services may open a protective services case.

20 (2) — If the Department of Human Services opens a case, it shall  
21 provide services to the family in an effort to prevent additional  
22 maltreatment to the child or the removal of the child from the home.

23 (3) — The services shall be relevant to the needs of the family.

24 (4) — If at any time during the protective services case the  
25 Department of Human Services determines that the child cannot safely remain  
26 at home, it shall take steps to remove the child under protective custody as  
27 outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, §  
28 9-27-301 et seq.

29 (d)(1) — If the report of child maltreatment is unsubstantiated, the  
30 Department of Human Services may offer supportive services to a family.

31 (2) — The family may accept or reject supportive services at any  
32 time.

33 (3) — Any family may request supportive services from the  
34 Department of Human Services.

35 (4) — Supportive services shall be offered for the purpose of  
36 preventing child maltreatment.