

INTERIM STUDY PROPOSAL 2019-034

1
2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019
5

A Bill

JMB/JMB
HOUSE BILL

6 By: Representative Petty
7 By: Senator K. Hammer

8 Filed with: House Committee on Judiciary
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO CREATE SARAH’S LAW; TO AMEND THE
12 AVAILABILITY OF RECORDS OR EVIDENCE INVOLVING SEXUAL
13 OR PHYSICAL ABUSE OF CHILDREN; AND FOR OTHER
14 PURPOSES.
15

Subtitle

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18 TO CREATE SARAH’S LAW; AND TO AMEND THE
19 AVAILABILITY OF RECORDS OR EVIDENCE
20 INVOLVING SEXUAL OR PHYSICAL ABUSE OF
21 CHILDREN.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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26 SECTION 1. DO NOT CODIFY. Title.

27 This act shall be known and may be cited as "Sarah’s Law".
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29 SECTION 2. Arkansas Code § 20-78-106 is amended to read as follows:

30 20-78-106. Availability of records from children’s advocacy centers
31 during investigation of suspected cases of child abuse or neglect =
32 Availability of records of evidence involving sexual or physical abuse of
33 children.

34 (a) Reports, correspondence, memoranda, case histories, medical
35 records, or other materials involving sexual or physical abuse of a child
36 compiled or gathered by a children’s advocacy center, law enforcement agency,

1 the Crimes Against Children Division of the Department of Arkansas State
2 Police, or the Department of Human Services shall be confidential and shall
3 not be released or otherwise made available except:

4 (1) To the attorney representing the abused child in a custody
5 or juvenile case with an order of appointment or an order recognizing entry
6 of appearance;

7 (2) For any audit or similar activity conducted with the
8 administration of any plan or program by any governmental agency that is
9 authorized by law to conduct the audit or activity;

10 (3) To law enforcement agencies, a prosecuting attorney, or the
11 Attorney General;

12 (4) To any licensing or registering authority to the extent
13 necessary to carry out its official responsibilities, but the information
14 shall be maintained as confidential;

15 (5) To a grand jury or court upon a finding that:

16 (A) Information in the record is necessary for the
17 determination of a civil, criminal, or administrative issue before the court
18 or grand jury; and

19 (B) The information cannot be obtained from a person or
20 entity described in subdivision (b)(2) of this section;

21 (6) To the Department of Human Services;

22 (7) To a court-appointed special advocate volunteer with a valid
23 court order;

24 (8) All records may be released to an attorney in any criminal,
25 civil, or administrative proceeding or to a party in a criminal, civil, or
26 administrative proceeding if the party is not represented by an attorney as
27 permitted under criminal, civil, or administrative discovery rules upon a
28 finding by the court that+ the information is discoverable under the Arkansas
29 Rules of Criminal Procedure, the Arkansas Rules of Civil Procedure, the
30 Arkansas Rules of Evidence, or the statutes and rules involving
31 administrative proceedings as relevant to the particular proceeding;

32 ~~(A) Information in the record is necessary for the~~
33 ~~determination of a criminal, civil, or administrative issue before a court or~~
34 ~~grand jury; and~~

35 ~~(B) The information cannot be obtained from a person or~~
36 ~~entity described in subdivision (b)(2) of this section;~~

1 (9) Medical records may be released to a person providing
2 medical or psychiatric care or services to the abused child; and

3 (10) For bona fide instructional purposes by Arkansas Children's
4 Hospital, the University of Arkansas for Medical Sciences, or a child
5 advocacy center in the care, detection, treatment, and management of
6 suspected child abuse and neglect.

7 (b)(1) Except as provided in subdivision (b)(2) of this section, no
8 person or agency to whom disclosure is made may disclose to any other person
9 reports or other information obtained under this section.

10 (2)(A) Law enforcement agencies, a prosecuting attorney, the
11 ~~department~~ Department of Human Services, a court of competent jurisdiction,
12 or the Attorney General may release reports or information obtained under
13 this section.

14 (B) However, any report or information released under this
15 subsection shall remain confidential.

16 (c)(1) ~~Nothing in this section shall~~ This section does not deny or
17 diminish the right of an attorney for a party or a party to a criminal,
18 civil, or administrative proceeding to receive discovery as provided in this
19 section in order for the attorney or party to:

- 20 (A) Prepare for trial;
- 21 (B) File appropriate pleadings; or
- 22 (C) Present evidence in court.

23 (2)(A)(i) The circuit court or district court, as appropriate,
24 shall issue protective orders under the Arkansas Rules of Criminal Procedure
25 or the Arkansas Rules of Civil Procedure, as applicable, or the Arkansas
26 Rules of Evidence to ensure that those items of evidence for which there is a
27 reasonable expectation of privacy and that otherwise should be sealed are not
28 distributed to persons or institutions that have no legitimate interest in
29 the evidence.

30 (ii) There is a reasonable expectation of privacy in
31 the following items:

- 32 (a) Audio or videotapes of a child witness;
- 33 (b) Photographs of a child witness;
- 34 (c) Name of a child victim; and
- 35 (d) Medical records of a child victim.

1 (B)(i) The administrative hearing officer or
2 administrative law judge shall issue protective orders to ensure that those
3 items of evidence for which there is a reasonable expectation of privacy and
4 that otherwise should be sealed are not distributed to persons or
5 institutions that have no legitimate interest in the evidence.

6 (ii) There is a reasonable expectation of privacy in
7 the following items:

- 8 (a) Audio or videotapes of a child witness;
- 9 (b) Photographs of a child witness;
- 10 (c) Name of a child victim; and
- 11 (d) Medical records of a child victim.

12 (C)(i) The circuit court or district court, as
13 appropriate, may enforce the orders with criminal or civil contempt or
14 sanctions, as appropriate.

15 (ii) The circuit court or district court, as
16 appropriate, may modify or vacate a protective order for good cause.

17 (iii) If a protective order was entered and has not
18 been vacated, the remedy for a violation of the protective order is limited
19 to criminal or civil contempt or sanctions by the circuit court or district
20 court, as appropriate, in which the protective order was entered.

21 (D) The protective order as described in subdivisions
22 (c)(2)(A)(i) and (c)(2)(B)(i) of this section shall identify what items shall
23 not be copied and what items shall be returned to the providing agency at the
24 conclusion of the proceedings.

25 (d) Except for purposes of enforcement concerning violations of a
26 protective order under subsection (c) of this section, disclosure of
27 information in violation of this section is a Class A misdemeanor.

28 (e)(1) The circuit court or district court may allow, consistent with
29 court rules, discovery of property or material that constitutes:

30 (A) The offense of engaging children in sexually explicit
31 conduct for use in visual or print medium under § 5-27-303;

32 (B) The offense of pandering or possessing visual or print
33 medium depicting sexually explicit conduct involving a child under § 5-27-
34 304; or

35 (C) A video recording of an interview of a child that is
36 made by a children's advocacy center, law enforcement agency, the Crimes

1 Against Children Division of the Department of Arkansas State Police, or the
2 Department of Human Services.

3 (2) Property or material described in subdivision (e)(1) of this
4 section shall remain in the care, custody, or control of the court or the
5 state.

6 (3)(A) If the state makes the property or material reasonably
7 available to the defendant, the circuit court or district court may deny,
8 consistent with court rules, any request by a defendant to copy, photography,
9 duplicate, or otherwise reproduce any property or material described in
10 subdivision (e)(1) of this section and shall specify the denial in the
11 protective order as described in subdivisions (c)(2)(A)(i) and (c)(2)(B)(i)
12 of this section.

13 (B) Property or material is reasonably available to the
14 defendant if the state provides at a facility under the control of the state
15 an opportunity for the inspection, viewing, and examination of the property
16 or material by the defendant, the attorney of the defendant, and any
17 individual that the defendant seeks to qualify to provide expert testimony at
18 trial.

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21 Referred by Representative Petty

22 Prepared by: JMB/JMB
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