

**ARKANSAS SENATE**  
85th General Assembly - Regular Session, 2005  
**Amendment Form**

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**Subtitle of Senate Bill No. 392**

"TO AMEND THE CHILD MALTREATMENT ACT."

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**Amendment No. 1 to Senate Bill No. 392.**

Amend Senate Bill No. 392 as originally introduced:

Page 2, delete lines 32 through 34 and substitute:

"(e) Without justifiable cause, unreasonably restricting a child's mobility, actions, or physical functioning such as tying the child to a fixed or heavy object or tying the child's limbs together;"

AND

Page 3, delete line 8 and substitute:

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

AND

Page 3, delete lines 10 and 11 and substitute:

"(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child;"

AND

Page 8, delete lines 18 through 21 and substitute:

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

AND

Page 8, delete lines 24 through 27 and substitute:

"(19) "Sexual exploitation" means:  
    (A) allowing Allowing, permitting, or encouraging participation or depiction of the juvenile child in:  
        (i) prostitution, Prostitution;



(ii) ~~obscene photographing,~~ Obscene photography;  
(iii) Obscene filming; or  
(B) ~~obscenely~~ Obscenely depicting, obscenely posing, or  
obscenely posturing a juvenile child for any use or purpose;"

AND

Page 9, line 10, delete "central registry" and substitute "central registry,  
unless the conviction is reversed or vacated."

AND

Page 9, delete line 22 and substitute:

"can request that the offender's name be removed from the central registry.  
Notwithstanding the foregoing provisions, with regard to offenders who were  
juveniles at the time of the act or omission that resulted in a true finding  
of child maltreatment, the Department shall:

(1) Not remove the name from the central  
registry if the offender was found guilty of, pled guilty to, or pled nolo  
contendere to a felony in circuit court as an adult for the act which is the  
same act for which the offender is named in the central registry unless the  
conviction is reversed or vacated; or

(2) Remove the name from the central  
registry if:

(A) More than five (5) years have  
elapsed from the date of the act or omission which caused the true finding of  
child maltreatment and there have been no subsequent acts or omissions  
resulting in a true finding of child maltreatment; and

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

AND

Page 12, delete line 1 and substitute:  
"subject of a report; and"

AND

Page 12, delete lines 13 through 16 and substitute:  
"(3) The type of founded report."

AND

Page 14, delete line 1 and substitute:  
"alleged offender.

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

AND

Page 14, delete line 26 and substitute:

“(D) Pinching, biting, or striking a child in the genital area.”

AND

Page 14, delete lines 32 through 34 and substitute:

“(5)(A) The child abuse hotline shall accept a report of physical abuse involving a bruise to a child even if at the time of the report the bruise is not visible but the bruising occurred:  
    (i) Within the past thirty (30) days; and  
    (ii) As a result of physical abuse as described in subsections (f)(1) through (f)(4) of this section.”

AND

Page 14, delete line 36 and substitute:

“unless the existence of the bruise is corroborated.”

AND

Page 16, delete line 31 and substitute:

“severe maltreatment.  
    (D) At the initial time of contact with the alleged offender, the investigator shall advise the alleged offender of the allegations made against the alleged offender in a manner that is consistent with the laws protecting the rights of the person who made the report.”

AND

Delete Section 13 in its entirety and substitute the following:

“SECTION 13. Arkansas Code § 12-12-512, as amended by Act 172 of 2005, is amended to read as follows:

12-12-512. Child maltreatment investigative determination - Notice of finding - Amendment and appeal.

(a) Upon completion of the investigation, the Department of Human Services shall determine that the allegations of child maltreatment are:

(1)(A)(i) Unsubstantiated.

(ii) This determination shall be entered when the allegation is not supported by a preponderance of the evidence.

(B)(i) ~~There can be no disclosure of unsubstantiated reports except~~ Unsubstantiated reports shall be confidential and shall be disclosed only to:

- (a) The prosecutor;
- (b) A subject of the report;
- (c) A court if the information in the record is necessary for a determination of an issue before the court;
- (d) Individual federal and state senators and representatives and their staff members, but no disclosure may be made to any committee or legislative body;
- (e) Law enforcement agencies; ~~and~~
- (f) Any appropriate licensing or registering

authority; and

(g) Adult protective services.

(ii) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to subdivision (a)(1)(B)(i) of this section; or

(2)(A)(i) True.

(ii) This determination shall be entered when the allegation is supported by a preponderance of the evidence, provided that for any act or omission of maltreatment which would be a criminal offense or an act of delinquency, any defense or affirmative defense which would be applicable to the criminal offense or delinquent act is also cognizable in a maltreatment proceeding.

(B)(i) A determination of true but exempted, which means that the offender's name shall not be placed in the Central Registry, shall ~~not~~ be entered if:

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

(b) The offender is an underaged juvenile aggressor.

(C)(i) Notwithstanding subdivision (a)(2)(A)(i) of this section, the department shall have the authority to pursue:

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

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

(ii) Except with respect to the withholding of medically indicated treatments from disabled infants with life-threatening conditions, case-by-case determinations concerning the exercise of authority in this subsection shall be within the sole discretion of the department.

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

(c)(1)(A)(i) In every case in which a report is determined to be true, the department shall notify each subject of the report of the determination.

(ii) If the offender is a juvenile age ten (10) or older and is in foster care, the department shall notify the juvenile's public defender or counsel for the juvenile and the legal parents or legal guardians of the offender.

(iii) If the offender is a juvenile age (10) or older, the department shall notify the legal parents or legal guardians of the offender.

(B) Notification shall be in writing by certified mail, restricted delivery, or by a process server.

(C) Notification to offenders who were adults at the time of the act or omission that resulted in the finding of child maltreatment shall include the following:

(i) The investigative determination, true or

unsubstantiated, exclusive of the source of the notification;

(ii) A statement that the person named as the offender of the true report may request an administrative hearing;

(iii) A statement that the request must be made to the department within thirty (30) days of receipt of the ~~hand-delivery~~ service or certified mailing of the notice of determination; and

(iv) The name of the person making notification, the person's occupation, and where he or she can be reached.

(D) Notification to offenders who were juveniles at the time of the act or omission that resulted in the finding of child maltreatment shall include the following:

(i) The investigative determination, true or unsubstantiated, exclusive of the source of the notification;

(ii) A statement that this matter has been referred for an automatic administrative hearing which can only be waived by the juvenile offender in writing with the concurrence of counsel;

(iii) A statement that a copy of this notice has been provided to the Arkansas Public Defender Commission who, upon request, shall represent at administrative hearings before the Department of Human Services, upon a showing of indigency of the parent, all offenders who were juveniles at the time of the act or omission that resulted in the finding of child maltreatment unless the juvenile or the juvenile's parents or guardians retain counsel;

(iv) The name of the person making notification, the person's occupation, and where he or she can be reached.

(2) The administrative hearing process must be completed within one hundred eighty (180) days from the date of the receipt of the request for a hearing, provided that:

(A) Delays in completing the hearing that are attributable to the petitioner shall not count against the one-hundred-eighty-day limit;

(B) Failure to complete the hearing process in a timely fashion shall not deprive the department or a court reviewing the child maltreatment determination of jurisdiction to make a final agency determination or review a final agency determination pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(C)(i) The one-hundred-eighty-day limit shall not apply if there is an ongoing criminal or delinquency investigation or criminal or delinquency charges have or will be filed regarding the occurrence that is the subject of the child maltreatment report.

(ii) In those cases, the administrative hearing shall be stayed pending final disposition of the criminal or delinquency proceedings.

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

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

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

(vi) If the criminal or delinquency proceedings have

reached no final outcome within twelve (12) months of the filing of the administrative appeal, the administrative appeal will be deemed waived if the petitioner fails to provide a written statement of the status of the criminal or delinquency proceedings every sixty (60) days and a disposition report within thirty (30) days of the entry of a dispositive judgment or order.

(3) When the department conducts administrative appeal hearings, the chief counsel of the department is authorized to require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when that testimony or information is necessary to adequately present the position of the department, the investigating protective services agency, or the alleged offender or adult subject of a report.

(4) If the petitioner prevails at the administrative hearing or circuit court hearing and the report is changed from true to unsubstantiated, upon request by the petitioner, the department shall tender a list of persons to whom a disclosure had previously been made that the report was true.

(d) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

(e) Administrative hearing decisions and all exhibits submitted at the hearing are confidential and may be used or disclosed only as provided in § 12-12-506(a)(2)(A).

(f)(1) The Office of Appeals and Hearings of the Department of Human Services shall designate the sites to be used for videoconference hearings.

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

- (A) Arkadelphia;
- (B) Booneville;
- (C) Conway;
- (D) Fayetteville;
- (E) Jonesboro;
- (F) Little Rock; or
- (G) Warren.

(3) The Office of Appeals and Hearings may, in its discretion, designate additional sites for videoconference hearings.

(g)(1) If any party requests an in-person hearing within thirty (30) days from the date that the party receives notification under subsection (c) of this section, then the in-person hearing shall be conducted in an office of the Department of Human Services nearest to the petitioner's residence, unless the hearing officer notifies the parties that the hearing will be conducted via videoconference.

(2) Sites for videoconference hearings shall include the location designated by the Office of Appeals and Hearings that is nearest to the petitioner's residence.

(3) The hearing officer and other parties may agree to appear at the location designated by the Office of Appeals and Hearings or at any other designated hearing locations that are convenient to them.

(h)(1) Certified copies of judgments or adjudications from a court of competent jurisdiction dealing with the same subject matter as issues concerned in the administrative hearing may be filed with and considered by the hearing officer in a motion for summary judgment.

(2)(A) A decision on any identical issue shall be rendered without a hearing.

(B) However, if the judgment or adjudication of the court is reversed or vacated and notice of the reversal or vacation is provided to the department, the department shall set the matter for hearing."

AND

Page 22, delete line 12 and substitute:

"writs of habeas corpus.

(3) Schools, residential facilities, hospitals, and other places that a child may be located shall not require a written court order for the department to take a seventy-two (72) hour hold under this section, § 9-27-313, or § 12-12-516

If appropriate, renumber the remaining sections of the bill

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Madison

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Secretary