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2 State of Arkansas
3 91st General Assembly
4 Regular Session, 2017

INTERIM STUDY PROPOSAL 2017-064
As Engrossed: S2/20/17 S3/21/17

A Bill

SENATE BILL 305

5
6 By: Senator A. Clark
7 By: Representative Hammer

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

For An Act To Be Entitled

10
11 AN ACT TO AMEND THE DEFINITION OF "NEGLECT" AND THE
12 LAW CONCERNING CLOSURES OF CHILD MALTREATMENT
13 INVESTIGATIONS; TO MAKE CERTAIN ACTS OF A PARENT,
14 GUARDIAN, CUSTODIAN, OR FOSTER PARENT NONCRIMINAL;
15 AND FOR OTHER PURPOSES.

Subtitle

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19 TO AMEND THE DEFINITION OF "NEGLECT" AND
20 THE LAW CONCERNING CLOSURES OF CHILD
21 MALTREATMENT INVESTIGATIONS; AND TO MAKE
22 CERTAIN ACTS OF A PARENT, GUARDIAN,
23 CUSTODIAN, OR FOSTER PARENT NONCRIMINAL.

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

27
28 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings.

29 The General Assembly finds that:

30 (1) Everyone desires the safety of all children;

31 (2) A child raised under constant adult supervision misses
32 opportunities for growth and, as a result, may end up stunted developmentally
33 and physically;

34 (3) The alarming rise of obesity and diabetes in childhood is
35 almost certainly linked to the insistence of parents and guardians on driving

1 their children to school and activities instead of allowing their children to
2 walk;

3 (4) As measured by incidences of mental health difficulties,
4 today's over-supervised youth experience more difficulties upon reaching
5 adulthood than earlier generations;

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

9 (6) Parents and guardians often are in the best position to
10 weigh the risks and make decisions concerning the safety of children under
11 their care, including where their children may go, with whom, and when; and

12 (7) The excessive investigation and prosecution of parents and
13 guardians who have done nothing more than briefly and safely permit their
14 children to remain unsupervised has introduced unnecessary governmental
15 intrusion into the homes of families and diverted valuable public resources
16 to inconsequential and trivial matters.

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18 SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative intent.

19 It is the intent of the General Assembly that this act:

20 (1) Protect and promote a parent or guardian's inherent right to
21 raise his or her children; and

22 (2) Protect a parent or guardian's decision to grant his or her
23 children unsupervised time to engage in activities that include without
24 limitation playing outside, walking to school, bicycling, remaining briefly
25 in a vehicle, and remaining at home.

26
27 SECTION 3. Arkansas Code Title 5, Chapter 27, Subchapter 1, is amended
28 to add an additional section to read as follows:

29 5-27-101. Noncriminal acts of parents, custodians, guardians, and
30 foster parents.

31 An act of a parent, custodian, guardian, or foster parent described
32 under § 12-18-103(14)(C) is not a criminal offense.

33
34 SECTION 4. Arkansas Code § 12-18-103(14), concerning the definition of
35 "neglect" under the Child Maltreatment Act, is amended to add an additional
36 subdivision to read as follows:

1 (C) "Neglect" does not include a parent, custodian,
2 guardian, or foster parent who permits his or her child to perform the
3 following actions unsupervised if the child is of sufficient capacity to
4 avoid immediate danger and a significant risk of harm:

5 (i) Travel to and from school including without
6 limitation traveling by walking, running, or bicycling;

7 (ii) Engage in outdoor play;

8 (iii) Remain for less than fifteen (15) minutes in a
9 vehicle if the temperature inside the vehicle is not or will not become
10 dangerously hot or cold; or

11 (iv) Remain at home before and after school if the
12 parent, custodian, guardian, or foster parent:

13 (a) Returns home on the same day on which the
14 parent, custodian, guardian, or foster parent gives the child permission to
15 remain at home;

16 (b) Makes provisions for the child to be able
17 to contact the parent, custodian, guardian, or foster parent on the same day
18 on which the parent, custodian, guardian, or foster parent gives the child
19 permission to remain at home; and

20 (c) Makes provisions for any reasonably
21 foreseeable emergencies that may arise on the same day on which the parent,
22 custodian, guardian, or foster parent gives the child permission to remain at
23 home;

24
25 SECTION 5. *Arkansas Code § 12-18-303, concerning the minimum*
26 *requirements for reports to be accepted by the Child Abuse Hotline, is*
27 *amended to add an additional subsection to read as follows:*

28 (e) A report that does not meet the requirements of subsection (a) of
29 this section shall not be accepted by the Child Abuse Hotline.

30
31 SECTION 6. *Arkansas Code § 12-18-601(d), concerning triage procedures*
32 *developed and implemented by the Department of Human Services and the*
33 *Department of Arkansas State Police, is amended to read as follows:*

34 (d)(1) *The Department of Human Services and the Department of Arkansas*
35 *State Police may develop and implement triage procedures for accepting and*
36 *documenting reports of child maltreatment of a child not at risk of imminent*

1 ~~harm if an appropriate referral is made to a community organization or~~
2 ~~voluntary preventive service.~~

3 (2) Triage procedures developed and implemented under this
4 subsection may include without limitation procedures for the:

5 (A) Appropriate referral of a report of child maltreatment
6 to a community organization or voluntary preventive service; and

7 (B) Closure of an investigation of a report of child
8 maltreatment.

9 (3) Triage procedures developed and implemented under this
10 subsection shall require the closure of an investigation of a report of child
11 maltreatment if before, during, or after a referral or an investigation it is
12 determined that the report of child maltreatment does not meet the
13 requirements of § 12-18-303(a).

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

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19 SECTION 7. Arkansas Code § 12-18-619, concerning the closure of child
20 maltreatment investigations by the Department of Human Services and the
21 Department of Arkansas State Police, is amended to add an additional
22 subsection to read as follows:

23 (d) The Department of Human Services and the Department of Arkansas
24 State Police shall close a child maltreatment investigation if at any time
25 before or during the investigation it is determined that the report of child
26 maltreatment does not meet the requirements of § 12-18-303(a).

27
28 SECTION 8. Arkansas Code § 12-18-623(a), concerning investigations of
29 reports of child maltreatment that may be closed by a Department of Arkansas
30 State Police investigator as unsubstantiated, is amended to read as follows:

31 (a)(1) A Department of Arkansas State Police investigator shall close
32 an investigation of a report of child maltreatment as unsubstantiated if it
33 is determined that the report of child maltreatment does not meet the
34 requirements of § 12-18-303(a).

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

4 ~~(1)~~(A) The child identified as the victim:

5 ~~(A)~~(i) Has been:

6 ~~(i)~~(a) Interviewed separate and apart from the
 7 alleged offender or any representative or attorney for the alleged offender
 8 when the child is of the age or ability to be interviewed; or

9 ~~(ii)~~(b) Observed separate and apart from the
 10 alleged offender or any representative or attorney for the alleged offender
 11 when the child is not of the age or ability to be interviewed; and

12 ~~(B)~~(ii) Credibly denies the allegation of child
 13 maltreatment;

14 ~~(2)~~(B) The child identified as the victim does not have
 15 the physical injuries or physical conditions that were alleged in the report
 16 of child maltreatment;

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

19 ~~(4)~~(D) The person identified as the alleged offender
 20 resides in the home or is a family member of the child identified as the
 21 victim, the Department of Arkansas State Police investigator has ascertained
 22 the environment in which the child resides and determined there is no merit
 23 to the report of child maltreatment as it pertains to the home environment;

24 ~~(5)~~(E) The Department of Arkansas State Police
 25 investigator:

26 ~~(A)~~(i) Has interviewed the person who made the
 27 report to the Child Abuse Hotline; or

28 ~~(B)~~(ii) Has made a good faith effort to contact the
 29 person who made the report to the Child Abuse Hotline but is unable to
 30 interview the person; and

31 ~~(C)~~(iii) Has not identified another maltreatment or
 32 health or safety factor regarding the victim child; and

33 ~~(6)~~(F) The Department of Arkansas State Police
 34 investigator interviewed a collateral witness and reviewed medical, school,
 35 and mental health records that are related to the allegations when the child
 36 was unable to effectively communicate.

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/s/A. Clark

Referred by the Arkansas Senate

Prepared by: VJF