

Arkansas Child Maltreatment Act

12-12-501. Title and purpose.

- (a) This subchapter shall be known and may be cited as the "Arkansas Child Maltreatment Act".
- (b) It is the purpose of this subchapter to:
 - (1) Provide a system for the reporting of known or suspected child maltreatment;
 - (2) Ensure the immediate screening, safety assessment, and prompt investigation of reports of known or suspected child maltreatment;
 - (3) Ensure that immediate steps are taken to:
 - (A) Protect a maltreated child and any other child under the same care who may also be in danger of maltreatment; and
 - (B) Place a child who is in immediate danger of severe maltreatment in a safe environment;
 - (4) Provide for immunity from criminal prosecution for an individual making a good faith report of suspected child maltreatment;
 - (5) Preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;
 - (6) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, prosecution, and treatment of child maltreatment; and
 - (7) Stabilize the home environment if a child's health and safety are not at risk.

History. Acts 1991, No. 1208, § 1; 2001, No. 1210, § 1; 2003, No. 758, § 1.

12-12-502. Regulations - Cooperative agreements.

- (a) The Director of the Department of Human Services shall promulgate regulations to implement the provisions of this subchapter.
- (b)(1) The director shall initiate formal cooperative agreements with law enforcement agencies, prosecuting attorneys, and other appropriate agencies and individuals in order to implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by the district prosecuting attorney pertaining to a law enforcement or prosecutor's investigation.
- (1) The director may enter into cooperative agreements with other states to create a national child maltreatment registration system.

History. Acts 1991, No. 1208, § 14; 1997, No. 1234, § 1.

12-12-503. Definitions.

As used in this subchapter:

- (1)(A) "Abandonment" means:
 - (i) Failure of a parent to:
 - (a) Provide reasonable support and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite

period in the future;

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

(ii) An articulated intent to forego parental responsibility.

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

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

(i) Extreme or repeated cruelty to a juvenile;

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

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

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

(v) Any nonaccidental physical injury;

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

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

(b) Striking a child with a closed fist;

(c) Shaking a child; or

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

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

(a) Striking a child age six (6) or younger on the face or head;

(b) Shaking a child age three (3) or younger;

(c) Interfering with a child's breathing;

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

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

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

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

(1) Marijuana;

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

(3) A narcotic; or

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

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

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

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

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

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

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

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

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

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

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

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

(f) The restraint is for a reasonable period of time.

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

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

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

(4)(A) "Central intake", otherwise referred to as the "child abuse hotline", means a unit that shall be established by the Department of Health and Human Services for the purpose of receiving and recording notification made pursuant to this subchapter.

(B) Central intake shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

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

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

(7) "Department" means the Department of Health and Human Services;

(8) "Deviate sexual activity" means any act of sexual gratification involving:

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

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

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

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

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

(10) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(11) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

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

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

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

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

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

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

- (vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume such responsibility; or
- (vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances creating a dangerous situation or a situation that puts the juvenile at risk of harm.

(B)(i) "Neglect" shall also include the causing of a newborn child to be born with:

(a) An illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) A health problem as a result of the mother's use before birth of an illegal substance.

(ii) As used in this subdivision (12)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

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

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

(13) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(14) "Pornography" means:

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

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

(C) Obscene or licentious material;

(15) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

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

(17) "Sexual abuse" means:

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

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

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

(iii) Indecent exposure; or

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

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

- (i) Sexual intercourse, deviate sexual activity, or sexual contact; or
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual

contact;

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

- (i) Sexual intercourse, deviate sexual activity, or sexual contact; or
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual

contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

- (i) Forcing or encouraging the watching of pornography; or
- (ii) Forcing, permitting, or encouraging the watching of live sexual

activity; or

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

- (i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
- (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(18)(A)(i) "Sexual contact" means any act of sexual gratification involving:

- (a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
- (b) The encouraging of a child to touch the offender in a sexual manner; or

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

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

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

(19) "Sexual exploitation" means:

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

- (i) Prostitution;
- (ii) Obscene photography;
- (iii) Obscene filming; or

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

(20) "Subject of the report" means:

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

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

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

History. Acts 1991, No. 1208, § 2; 1993, No. 1126, §§ 3-5; 1995, No. 804, § 2; 1995, No. 1341, §§ 1-3; 1997, No. 1334, § 1; 1999, No. 36, § 1; 1999, No. 1340, §§ 22-25, 34, 36; 2001, No. 1210, § 2; 2003, No. 175, § 1; 2003, No. 758, § 2; 2005, No. 1176, § 2; 2005, No. 1706, § 1.

12-12-504. Penalties.

(a)(1) Any person, official, or institution negligently or willfully failing to make notification when required by this subchapter shall be guilty of a Class C misdemeanor.

(2) Any person, official, or institution willfully making false notification pursuant to this subchapter, knowing such allegations to be false, shall be guilty of a Class A misdemeanor.

(3) Any person, official, or institution willfully making false notification pursuant to this subchapter, knowing such allegations to be false; and who has been previously convicted of making willful false allegations shall be guilty of a Class D felony.

(b) Any person, official, or institution required by this subchapter to make notification of suspected child maltreatment who willfully fails to do so shall be civilly liable for damages proximately caused by that failure.

(c) Any person who willfully permits, and any other person who encourages, the release of data or information contained in the central registry to persons to whom disclosure is not permitted by this subchapter shall be guilty of a Class A misdemeanor.

(d) Judges or prosecuting attorneys who fail to make notification when required by this subchapter shall not be subject to any of the penalties outlined in this subchapter.

History. Acts 1991, No. 1208, § 12; 1995, No. 1341, § 4; 1997, No. 1351, § 1.

12-12-505. Central registry.

(a) There is established within the Department of Health and Human Services a statewide central registry for the collection of records of cases involving allegations of child maltreatment that are determined to be true pursuant to this subchapter.

(b)(1)(A)(i) Records of all cases in which allegations are determined to be true shall be retained by the central registry.

(ii) If an offender is found guilty of, pleads guilty to, or pleads nolo contendere to an act that is the same act for which the offender is named in the central registry regardless of any subsequent expungement of the offense from the offender's criminal record, the offender shall always remain in the central registry unless the conviction is reversed or vacated.

(iii)(a) The department shall identify in its policy and procedures manual the types of child maltreatment that will automatically result in the removal of the name of an offender from the central registry.

(b) If an offender has been entered into the central registry as an offender for the named types of child maltreatment identified pursuant to subdivision (b)(1)(A)(iii)(a) of this section, the offender's name shall be removed from the central registry on reports of this type of child maltreatment when the offender has not had a subsequent true report of this type for one (1) year and more than one (1) year

has lapsed since the closure of any protective services or foster care case opened as the result of this report.

(iv)(a) The department shall identify in its policy and procedures manual the types of child maltreatment for which an offender can request that the offender's name be removed from the central registry.

(b) If an offender has been entered into the central registry as an offender for the named types of child maltreatment identified pursuant to subdivision (b)(1)(A)(iv)(a) of this section, the offender may petition the department requesting that the offender's name be removed from the central registry when the offender has not had a subsequent true report of this type for five (5) years and more than five (5) years have elapsed since the closure of any protective services or foster care case opened as the result of this report.

(c) The department shall develop policy and procedures to assist it in determining whether or not to remove the offender's name from the central registry.

(d) If the department denies the request for removal of the name from the central registry, the offender may request an administrative hearing within thirty (30) days from receipt of the department's decision.

(v) Notwithstanding the provisions of subdivisions (b)(1)(A)(i)-(iv) of this section, with regard to an offender who was a juvenile at the time of the act or omission that resulted in a true finding of child maltreatment, the department shall:

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

(b) Remove the offender's name from the central registry if:

(1) More than five (5) years have elapsed from the date of the act or omission that 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

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

(c) The central registry may adopt such rules and regulations as may be necessary to encourage cooperation with other states in exchanging true reports and to effect a national registration system.

(d) The Director of the Department of Health and Human Services shall adopt rules and regulations necessary to carry out the provisions of this subchapter, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the director shall not commence the process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., until the proposed rules and regulations have been reviewed by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(e)(1) The department may charge a reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files of child maltreatment cases.

(2) The department may also charge a reasonable fee for reproducing copies of tapes and photographs.

(3) No fee may be charged to a nonprofit or volunteer agency that requests searches of the investigative files.

(4) No fee may be charged to a person who is indigent.

History. Acts 1991, No. 1208, §§ 8, 9; 1993, No. 1088, § 1; 1995, No. 1341, § 5; 1997, No. 1334, § 2; 2001, No. 1210, § 3; 2001, No. 1434, § 1; 2003, No. 758, §§ 3, 4; 2005, No. 1706, § 2.

12-12-506. Disclosure of central registry data.

(a)(1) A report made pursuant to this subchapter shall be confidential and shall be used or disclosed only as provided in this section.

(2)(A) If the allegations are determined to be true in accordance with § 12-12-512, disclosure is absolutely limited to:

- (i) The administration of the adoption, foster care, children's and adult protective services programs, or child care licensing programs of any state;
- (ii) A federal, state, or local government entity, or any agent of the entity, having a need for the information in order to carry out their responsibilities under law to protect children from abuse or neglect;
- (iii) Any person who is the subject of a true report;
- (iv) A civil or administrative proceeding connected with the administration of the Arkansas Child Welfare State Plan when the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;
- (v) The administration of any federal or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need;
- (vi) An audit or similar activity conducted in connection with the administration of such a plan or program by any governmental agency that may by law conduct the audit or activity;
- (vii) A person, agency, or organization engaged in a bona fide research or evaluation project, but without information identifying individuals named in a report or record, provided that:
 - (a) Having that information open for review is essential to the research or evaluation;
 - (b) Prior written approval is granted by the Director of the Department of Health and Human Services; and
 - (c) The child, through his or her parent, guardian, or guardian ad litem, gives permission to release the information;
- (viii) A properly constituted authority, including multidisciplinary teams referenced in § 12-12-502(b), investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(ix)(a) The Division of Child Care and Early Childhood Education of the Department of Health and Human Services and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer or who has applied for employment or who is currently employed by a child care facility or who is the owner or operator of a child care facility.

(b) This disclosure shall be for the limited purpose of providing central registry background information and shall indicate a true finding only;

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

(xi) Child fatality review panels as authorized by the department;

(xii) The general public, the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality, but the central registry may redact any information concerning siblings, attorney-client communications, and other confidential communications;

(xiii) A grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(xiv) The current foster parents of a child who is a subject of a report;

(xv)(a) Individual federal and state senators and representatives and their staff members who agree not to allow any redisclosure of information.

(b) However, no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(xvi) A court-appointed special advocate upon presentation of an order of appointment for a child who is a subject of a report;

(xvii) The attorney ad litem of a child who is the subject of a report; and

(xviii)(a) An Employer or volunteer agency for purposes of screening an employee, applicant, or volunteer who is or will be engaged in employment or activity with children, the elderly, the disabled, or the mentally ill upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(b) The registry shall release only the following information on founded reports to the employer or agency:

(1) That the employee, applicant, or volunteer has a founded report;

(2) The date the investigation was completed; and

(3) The type of founded report.

(B) A report of an investigative determination that is true shall be disclosed to the division, by written report only, for purposes of enforcement of licensing laws and regulations.

(b) Any licensing or registering authority in receipt of initial notification of suspected child maltreatment may access the central registry to the extent necessary to carry out its official responsibilities, but the information must be maintained as confidential.

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

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

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(d) A true report that has been administratively appealed pursuant to this subchapter and that has been stayed because of criminal proceedings shall not be disclosed other than for administration of adoption, foster care, or children's protective services programs.

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

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

(f) Within ten (10) days following an investigative determination, the department shall provide the person or agency making notification of suspected child maltreatment information as to whether an investigation has been conducted and whether services have been offered.

(g) The department may disclose the investigative determination of any offender when the offender is engaged in child-related activities or employment and the department has determined that children under the care of the offender are at risk of maltreatment by the offender.

(h) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the subject of the report.

(i) Any record of a screened-out report of child maltreatment shall not be disclosed except to the prosecuting attorney and an appropriate law enforcement agency and may be used only within the department for purposes of administration of the program.

(j)(1) Information on a pending investigation is confidential and may be disclosed only as provided in this section.

(2) Information on a pending investigation shall be released upon request to:

(A) The department;

(B) Law enforcement;

(C) The prosecuting attorney's office;

(D) A multidisciplinary team under § 12-12-502;

(E) Any licensing or registering authority, including a school board, superintendent, or principal to the extent necessary to carry out its official responsibilities, but the information shall be maintained as confidential; and

(F)(i) Individual federal and state senators and representatives and their staff members who agree not to allow any redisclosure of information.

(ii) However, no disclosure may be made to any committee or legislative body.

(3) Information on a pending investigation may be released to or disclosed in a circuit court child custody case or similar case if:

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

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

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

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

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

(F) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(G) Release or disclosure of the information will not compromise a criminal investigation.

(4)(A) Information on a pending investigation may be released to or disclosed in the circuit court if the victim or offender has an open dependency-neglect or family in need of services case before the circuit court in the following circumstances:

(i) A petition for dependency-neglect has been filed and the pending investigation is the basis in whole or part for the petition for dependency-neglect;

(ii) The department identifies the pending investigation in a court report that is provided to all of the parties before the hearing; or

(iii) Written notice of intent to request release or disclosure is provided by a party to all other parties in the matter and to the investigating agency at least five (5) days before the date for release or disclosure.

(B) The circuit court shall order release or disclosure only after:

(i) Providing all parties and the investigating agency, if not a party, the opportunity to appear before the court and be heard on the issue of release or disclosure;

(ii) Determining that the information gathered thus far by the investigative agency is necessary for the determination of an issue before the court;

(iii) Determining that waiting until the completion of the investigation will jeopardize the health and safety of the child in the dependency-neglect or family in need of services case;

(iv) Entering a protective order to prevent redisclosure of the information provided by the investigative agency or limiting the release or disclosure of the information to only the court in camera; and

(v) Determining that releasing or disclosing the information will not compromise a criminal investigation.

(C) However, nothing in subdivision (j)(4)(B) of this section limits discovery by a party if a petition for dependency-neglect has been filed but not yet adjudicated.

History. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 2; 1995, No. 1341, § 6; 1997, No. 1334, § 3; 1999, No. 1222, §§ 4, 5; 1999, No. 1340, §§ 26, 27; 2001, No. 1210, § 4; 2003, No. 758, §§ 5, 6; 2005, No. 1706, §§ 3-5.

12-12-507. Reports of suspected abuse or neglect.

(a) Any person with reasonable cause to suspect child maltreatment or that a child has died as a result of child maltreatment, or who observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, may immediately notify the child abuse hotline.

(b) When any of the following has reasonable cause to suspect that a child has been subjected to child maltreatment or has died as a result of child maltreatment or observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment, he or she shall immediately notify the child abuse hotline:

- (1) Any child care worker or foster care worker;
- (2) A coroner;
- (3) A day care center worker;
- (4) A dentist;
- (5) A dental hygienist;
- (6) A domestic abuse advocate;
- (7) A domestic violence shelter employee;
- (8) A domestic violence shelter volunteer;
- (9) An employee of the Department of Health and Human Services;
- (10) An employee working under contract for the Division of Youth Services of the Department of Health and Human Services;
- (11) Any foster parent;
- (12) A judge;
- (13) A law enforcement official;
- (14) A licensed nurse;
- (15) Any medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (16) A mental health professional;
- (17) An osteopath;
- (18) A peace officer;
- (19) A physician;
- (20) A prosecuting attorney;
- (21) A resident intern;
- (22) A school counselor;
- (23) A school official;
- (24) A social worker;
- (25) A surgeon;
- (26) A teacher;
- (27) A court-appointed special advocate program staff member or volunteer;
- (28) A juvenile intake or probation officer; or
- (29) Any clergyman, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent he or she:

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

(B) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission.

(c) No privilege or contract shall prevent anyone from reporting child maltreatment when he or she is a mandated reporter as required by this section.

(d)(1) If the child abuse hotline receives notification that a client or a resident of any facility licensed or registered by the State of Arkansas has been subjected to child maltreatment while at the facility, then the Department of Health and Human Services shall immediately notify the facility's licensing or registering authority of the child abuse hotline's receipt of initial notification of suspected maltreatment.

(2) The Department of Health and Human Services may notify a school's superintendent, principal, or a person in an equivalent position of the child abuse hotline's receipt of initial notification of suspected maltreatment if:

(A) The child abuse hotline receives notification that a public or private school employee or volunteer having direct or unsupervised contact with children has been identified as an alleged offender in a report of suspected child maltreatment; and

(B) The Department of Health and Human Services has determined that children under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender.

(3) The Department of Health and Human Services may notify an alleged offender's employer or a person in charge of an activity of the child abuse hotline's receipt of initial notification of suspected maltreatment if:

(A) The child abuse hotline receives notification that a report has been received on a person who is engaged in child-related activities or employment and that person has been named as an alleged offender; and

(B) The Department of Health and Human Services has determined that children under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender.

(4) The Department of Health and Human Services shall promulgate rules that will ensure that notification required under this subsection is specifically approved by a responsible manager in the Department of Health and Human Services before the notification is made.

(e)(1) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the Department of Health and Human Services or a Department of Health and Human Services employee or employee's spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the Department of Health and Human Services.

(2)(A) Such procedures shall include referral of allegations to the Department of Arkansas State Police or appropriate law enforcement agency should the allegation involve severe maltreatment.

(B) The investigating agency shall immediately notify local law enforcement of all reports of severe maltreatment.

(f)(1) The child abuse hotline shall accept a report when the allegations, if true, would constitute child maltreatment as defined in § 12-12-503 and so long as sufficient identifying information is provided to identify and locate the child or the family.

(2) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur, but the report shall not be determined to be true unless the child suffered an injury as the result of the act:

- (A) Throwing, kicking, burning, biting, or cutting a child;
- (B) Striking a child with a closed fist;
- (C) Shaking a child age four (4) or older; or
- (D) Striking a child age seven (7) or older on the face or on the head.

(3) The child abuse hotline shall accept a report of physical abuse if any of the following intentional or knowing acts are alleged to occur:

- (A) Shaking a child age three (3) or younger;
- (B) Striking a child age six (6) or younger on the face or on the head;
- (C) Interfering with a child's breathing; or
- (D) Pinching, biting, or striking a child in the genital area.

(4)(A) The child abuse hotline shall accept a report of physical abuse if a child suffers an injury as the result of a restraint.

(B) The report shall be determined not to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as provided in § 12-12-503(2)(C)(ii).

(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 if the bruising occurred:

- (i) Within the past fourteen (14) days; and
- (ii) As a result of physical abuse as described in subdivisions

(f)(1)-(4) of this section.

(B) However, the report shall not be determined to be true unless the existence of the bruise is corroborated.

(6) The child abuse hotline shall accept a report of neglect as defined under § 12-12-503(12)(B) only if the reporter is one (1) of the following mandatory reporters and the reporter has reasonable cause to suspect that a child has been subjected to neglect as defined under § 12-12-503(12)(B):

- (A) A licensed nurse;
- (B) Any medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (C) An osteopath;
- (D) A physician;
- (E) A resident intern; or
- (F) A surgeon.

(7) The child abuse hotline shall accept a report of child maltreatment naming an adult as the victim only if:

- (A) The alleged offender is a caretaker of a child; and
- (B) The person making the report is one (1) of the following:
 - (i) The adult victim;
 - (ii) A law enforcement officer;

- (iii) The adult victim's counselor or therapist; or
- (iv) The alleged offender's counselor or therapist.

(g)(1) The child abuse hotline shall accept a report if the child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(2) If the child or the child's family resides in another state, the child abuse hotline shall screen out the report, transfer the report to the child abuse hotline of the state where the child or the child's family resides or the incident occurred, and, if requested by the other state's investigating agency, send a copy to the appropriate investigating agency in Arkansas to initiate interviews.

(3) If the incident occurred in Arkansas and the victim, offender, or parents no longer reside in Arkansas, the child abuse hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request assistance in completing the investigation, including an interview with the out-of-state subject of the report.

(4)(A) If the child abuse hotline receives a report and the alleged offender is a resident of the State of Arkansas and the report of child maltreatment in the state or country in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the child abuse hotline shall refer the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate, alone or in concert with, the investigative agency of any other state or country that may be involved.

(B) The Arkansas investigating agency shall make an investigative determination and shall provide notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the central registry.

(C) The other state may also conduct an investigation in this state that results in the offender's being named in a true report in that state and placed in the central registry of that state.

(h) The child abuse hotline shall accept telephone calls or other communications alleging that a child is dependent-neglected, as defined in § 9-27-303(17), and shall immediately refer this information to the Department of Health and Human Services.

History. Acts 1991, No. 1208, §§ 3, 4; 1993, No. 1126, § 6; 1995, No. 1341, §§ 7, 8; 1999, No. 214, § 1; 2001, No. 1210, § 5; 2001, No. 1236, § 1; 2003, No. 758, §§ 7-9; 2003, No. 1039, § 1; 2005, No. 912, § 1; 2005, No. 1176, § 5; 2005, No. 1706, §§ 6-8.

12-12-508. Radiology procedures, photographs, and medical records.

(a) Any person who is required to make notification under this subchapter may take or cause to be taken radiology procedures and photographs or compile medical records which may be probative as to the existence or extent of child maltreatment.

(b) Hospitals and clinics may make videotapes which may be probative as to the existence or extent of child maltreatment.

(c) The Department of Human Services or law enforcement officials shall have access to the results of radiology procedures, videotapes, photographs, or medical records upon request.

(d) The department and law enforcement officials shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation.

History. Acts 1991, No. 1208, § 3; 1997, No. 535, § 1; 1999, No. 1340, § 28; 2001, No. 1210, § 6.

12-12-509. Investigation - Examinations of children.

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

(2)(A) All investigations shall begin within seventy-two (72) hours.

(B) However, if the notice contains an allegation of severe maltreatment, then the investigation shall begin within twenty-four (24) hours.

(C) Notification of any report of child maltreatment will be provided within five (5) business days to the:

(i) Legal parents of any child in foster care who is named as an alleged victim or offender;

(ii) Attorney ad litem of any foster child named as the victim or offender;

(iii) Attorney ad litem of all other children in the same foster home if the maltreatment occurred in the foster home;

(iv) Local law enforcement on an allegation of severe maltreatment; and

(v) The prosecuting attorney on an allegation of 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.

(3)(A) The prosecuting attorney may provide written notice to the Department of Health and Human Services that the Department of Health and Human Services does not need to provide notification of the initial maltreatment report to the prosecuting attorney's office.

(B) Upon receiving the notification, the Department of Health and Human Services shall not be required to provide notification of the initial maltreatment report to the prosecuting attorney's office.

(b)(1) If the alleged offender is a family member or lives in the home with the alleged victim, the investigation shall seek to ascertain:

(A) The existence, cause, nature, and extent of the child maltreatment;

(B) The existence and extent of previous injuries;

(C) The identity of the person responsible for the maltreatment;

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

(E) The circumstances of the parents or caretakers of the child;

(F) The environment where the child resides;

(G) The relationship of the child or children with the parents or caretakers; and

(H) All other pertinent data.

(2) If the alleged offender is not a family member nor living in the home with the alleged victim, the investigation shall seek to ascertain:

(A) The existence, cause, nature, and extent of the child's maltreatment;
(B) The identity of the person responsible for the maltreatment;
(C) The existence and extent of previous maltreatment perpetrated by the alleged offender;

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

(E) If the report is determined to be true and is a report of sexual intercourse, deviate sexual activity, or sexual contact, an assessment of any other children previously or currently under the care of the alleged offender, to the extent practical, and whether these children have been maltreated or are at risk of maltreatment; and

(F) All other pertinent and relevant data.

(c)(1)(A) The investigation shall include interviews with the parents, both custodial and noncustodial.

(B) If neither parent is the alleged offender, the investigation shall also include an interview with the alleged offender.

(C) The investigation shall include an interview with any other relevant persons.

(2)(A) The investigation shall include an interview with the child separate and apart from the alleged offender or any representative or attorney for the alleged offender.

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

(3) The investigation may include a physical examination, radiology procedures, photographs, and a psychological or psychiatric examination of all children subject to the care, custody, or control of the alleged offender.

(4) If, after exercising reasonable diligence in conducting any or all interviews, the subjects of the interviews cannot be located or are unable to communicate, the efforts to conduct such interviews shall be documented and the investigation shall proceed pursuant to this subchapter.

(d)(1) An investigative determination shall be made in each investigation within thirty (30) days regardless of whether the investigation is conducted by the Department of Health and Human Services, the Crimes Against Children Division of the Department of Arkansas State Police, or local law enforcement.

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

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

(A) The names and conditions of any minor children of the alleged offender;

(B) Whether minor children of the alleged offender have been maltreated or are at risk of maltreatment; and

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

(4) No investigation shall be transferred to inactive status because an investigator is awaiting documentary evidence.

History. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 9; 1997, No. 535, § 2; 1997, No. 1334, § 4; 1999, No. 626, § 1; 2001, No. 1210, § 7; 2003, No. 175, § 2; 2003, No. 758, § 10; 2005, No. 1466, § 5; 2005, No. 1706, §§ 9, 10.

12-12-510. Investigative powers.

(a)(1) A person conducting an investigation required by this subchapter shall have the right to enter into or upon a home, school, or any other place for the purpose of conducting the investigation and interviewing or completing the investigation.

(2)(A) No publicly supported school, facility, or institution may deny access to any person conducting a child maltreatment investigation.

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

(b) If necessary access or admission is denied, the Department of Health and Human Services may petition the proper juvenile division of circuit court for an ex parte order of investigation requiring the parent, caretaker, or persons denying access to any place where the child may be to allow entrance for the interviews, examinations, and investigations.

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

(d) The department shall investigate all allegations of child maltreatment without regard to the parent's practice of his or her religious beliefs and shall only consider whether the acts or omissions of the parent are abusive or neglectful as defined by the Arkansas Code.

(e) The person conducting the investigation shall have the right to inspect personnel records of employees and volunteers in any place where an allegation of child maltreatment has been reported as having occurred at that place but the alleged offender is unknown.

(f) The investigator shall have the discretion in the child's best interest to limit the persons allowed to be present when a child is being interviewed concerning allegations of child maltreatment.

(g) Upon request by the investigating agency, any school, day care center, child care facility, residential facility, residential treatment facility, or similar institution shall provide the investigator with:

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

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

History. Acts 1991, No. 1208, § 4; 1993, No. 1126, § 7; 1997, No. 1334, § 5; 1999, No. 1340, § 29; 2003, No. 758, §§ 11, 12; 2005, No. 1706, §§ 11, 12.

12-12-511. Investigation to be closed.

(a) If at any time before or during the investigation it is determined that the alleged offender is not a caretaker of any child, and the alleged victim has attained majority prior to notification, the child maltreatment investigation shall be closed notwithstanding any criminal investigation.

(b)(1) Notwithstanding any provision of the Arkansas Rules of Evidence, any privilege between a minister and any person confessing to or being counseled by the minister shall not constitute grounds for excluding evidence at any dependency-neglect proceeding or proceedings involving custody of a minor.

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

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

(B) Close its investigation; and

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

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

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

(c) If at any time before or during the investigation the department is unable to locate or identify the alleged offender because the alleged maltreatment occurred more than five (5) years ago or in another state, the department shall consider the report unable to be completed and placed in inactive status.

History. Acts 1991, No. 1208, § 4; 1995, No. 1341, § 10; 1997, No. 1334, § 6; 2001, No. 1210, § 8.

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

(a) Upon completion of the investigation, the Department of Health and 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) An unsubstantiated report 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;
- (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 a report or other information obtained pursuant to subdivision (a)(1)(B)(i) of this section; or

(2)(A)(i) True.

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

(b) However, for any act or omission of maltreatment which would be a criminal offense or an act of delinquency, any defense or affirmative defense that 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 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 may 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 a disabled infant 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 ten (10) years of age 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 ten (10) years of age 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 an offender who was an adult 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 service or certified mailing of the notice of determination;
- (iv) The name of the person making notification, the person's occupation, and where he or she can be reached; and
- (v) A statement that the administrative hearing may take place in person if requested by the petitioner or the petitioner's attorney within thirty (30) days from the date that the petitioner receives notification under this subsection (c), provided that the hearing officer may conduct the hearing by video teleconference in lieu of an in-person hearing. If neither party requests that the hearing be conducted in person, then the hearing shall be conducted telephonically.

(D) Notification to an offender who was a juvenile 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 matter has been referred for an automatic administrative hearing that may only be waived by the juvenile offender in writing; and
- (iii) The name of the person making the notification to the juvenile offender, 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, or the petitioner's name shall be removed from the central registry, provided that:

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

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

(5)(A) If a petitioner's name is removed from the central registry as a result of a failure to comply with this subsection (c), then the department shall report any failures to comply with this subsection (c) for each quarter to the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

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

(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 Health and Human Services shall designate the sites to be used for video teleconference 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 may designate additional sites for video teleconference 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 nearest to the petitioner's residence unless the hearing officer notifies the parties that the hearing will be conducted via video teleconference.

(2) A site for a video teleconference hearing shall include the location designated by the office 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 or at any other designated hearing locations that are convenient to them.

(h)(1) A certified copy of a judgment or an adjudication from a court of competent jurisdiction dealing with the same subject matter as an issue 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 a hearing.

History. Acts 1991, No. 1208, §§ 5, 7; 1993, No. 1126, § 8; 1995, No. 804, § 3; 1995, No. 1341, § 11; 1997, No. 1334, § 7; 1999, No. 1340, § 30; 2001, No. 1210, § 9; 2003, No. 758, §§ 13, 14; 2005, No. 132, § 1; 2005, No. 172, §§ 1, 2; 2005, No. 1706, § 13.

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 evidence may be cited on affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

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

History. Acts 1991, No. 1208, § 7; 2001, No. 1210, § 10.

12-12-514. Child maltreatment investigative report.

(a) The agency responsible for the investigation shall make a complete written report of the investigation by the conclusion of the thirty-day time period set forth in § 12-12-509(d) of this subchapter.

(b) The report shall include the following information:

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

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

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

(4) The investigative determination;

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

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

(7) Services offered and accepted;

(8) Family composition;

(9) The source of the notification; and

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

(c)(1)(A) A copy of the written report and any supporting documentation, including statements from witnesses and transcripts of interviews, shall immediately be filed at no cost with the central registry.

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

(2)(A) Notification of the investigative determination shall be provided to the appropriate law enforcement agency and prosecuting attorney's office regarding reports of severe maltreatment.

(B) Notification of the investigative determination shall be provided to any appropriate licensing or registering authorities.

(3) If the investigative determination is true and the victim or offender is in foster care, notification of the investigative determination shall be provided to the juvenile division of circuit court, the juvenile division court-appointed attorneys ad litem of the victim and offender, court-appointed special advocates if appointed in an open dependency-neglect case, and the legal parents of the victim or offender who is in foster care.

(d) Notwithstanding any provision of this subchapter, the department shall forward the investigative determination, exclusive of the source of the notification, the name of the person making notification, the person's occupation, and where he or she can be reached, to the parents and alleged offender by a process server or by certified mail, restricted delivery, addressed to the recipient's last known address.

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

History. Acts 1991, No. 1208, § 6; 1995, No. 1341, § 12; 1997, No. 1334, § 8; 2001, No. 1210, § 11; 2003, No. 758, § 15.

12-12-515. Provision of information to person or agency making initial notification of suspected maltreatment.

(a)(1) If the person or agency making the initial notification of suspected child maltreatment is required to do so by this subchapter, the Department of Human Services, within ten (10) business days of the child maltreatment investigative determination, shall provide to the person the following information:

- (A) The investigative determination; and
- (B) Services offered and provided.

(2)(A) The department shall provide the local educational agency, specifically the school counselor where the maltreated child attends school, a report including the name and relationship of the offender to the maltreated child and indicating the department's founded investigative determination regarding the child and the services offered or provided by the department to the child.

(B) The department shall also provide the local educational agency, specifically the school counselor, a report indicating the department's founded investigative determination on any juvenile age ten (10) or older who is named as the offender in a true report and the services offered or provided by the department to the juvenile offender.

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

(b)(1) The department may provide information to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosing, caring for, treating, or supervising a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(2) This information may include:

- (A) The investigative determination or the investigation report; and
- (B) The services offered and provided.

History. Acts 1991, No. 1208, § 9; 1992 (1st Ex. Sess.), No. 49, § 1; 1995, No. 1341, § 13; 1997, No. 1334, § 9; 2001, No. 1210, § 12; 2003, No. 758, § 16.

12-12-516. Protective custody of children.

(a)(1) A police officer, a law enforcement official, a juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of the Department of Health and Human Services may take a child into protective custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if the:

- (A) Child is dependent-neglected as defined in § 9-27-303(17);

(B) Child is dependent as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

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

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

(b) The individual taking the child into protective custody may give effective consent for medical, dental, health, and hospital services during protective custody.

(c) In any case in which protective custody is invoked, the individual taking the child into protective custody shall notify the department in order that a child protective proceeding may be initiated within the time specified in this section.

(d) The department or prosecuting attorney may file a petition in the appropriate court seeking imposition of penalties for violation of this subchapter.

(e) A school, residential facility, hospital, and any other place 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 or § 9-27-313.

History. Acts 1991, No. 1208, § 10; 1999, No. 1340, § 31; 2001, No. 1210, § 13; 2003, No. 758, § 17; 2003, No. 1166, § 32; 2005, No. 1706, § 14.

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.

History. Acts 1991, No. 1208, § 11; 2005, No. 1706, § 15.

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.

History. Acts 1991, No. 1208, § 13; 2001, No. 1210, § 14; 2003, No. 1039, § 2.

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 in determining whether or not to remove a child from the custody of his or her parents.

(b)(1)(A) If an investigation determines that the child cannot safely remain at home, the Department of Human Services shall take steps to remove the child under protective custody as outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(B) After the Department of Human Services has removed the child, the child shall be placed in a licensed or approved foster home, shelter, or facility, or an exempt child welfare agency as defined at § 9-28-402(12).

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

(2) If an investigation determines that the child can safely remain at home, the parents retain the right to keep the child at home or to place the child outside the home.

(c)(1) If the child maltreatment investigation is determined to be true, the Department of Human Services may open a protective services case.

(2) If the Department of Human Services opens a case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or the removal of the child from the home.

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

(4) If at any time during the protective services case the Department of Human Services determines that the child cannot safely remain at home, it shall take steps to remove the child under protective custody as outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(d)(1) If the report of child maltreatment is unsubstantiated, the Department of Human Services may offer supportive services to a family.

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

(3) Any family may request supportive services from the Department of Human Services.

(4) Supportive services shall be offered for the purpose of preventing child maltreatment.

History. Acts 2001, No. 1210, § 15.

