

State of Arkansas

76th General Assembly

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HOUSE BILL 1969

By: Representatives Pollan and Cabe

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 397 OF 1975, AS AMENDED, [ARK. STAT. 42-807 ET SEQ] THE CHILD ABUSE AND NEGLECT REPORTING ACT, TO PROVIDE ACCESS TO INTERVIEW THE INTERESTED PARTIES; TO PROVIDE FOR THE COLLECTION OF INFORMATION; TO CLARIFY THE ROLE OF THE INVESTIGATOR OF HUMAN SERVICES; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (c) of Section 8 of Act 397 of 1975, as amended, the same being Arkansas Statute 42-813(c), is hereby amended to read as follows:

"(c) The investigation shall include an interview with the parent(s), the alleged perpetrator, and the child. If admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for the child(ren) for such interview or other steps necessary or required herein for the completion of the investigation cannot be obtained, then the Juvenile Division of the Probate Court shall order the parents or persons responsible and in charge of any place where the child may be to allow entrance for the interview, examination, and investigation; provided, however, that upon application to the court showing good cause the order may be stayed pending a hearing to be held within 72 hours."

SECTION 2. Section 8 of Act 397 of 1975, as amended, the same being Arkansas Statute 42-813, is hereby amended by adding a new subsection to read as follows:

"(i) If at any time before or during the investigation it appears that the perpetrator is identified and there is insufficient evidence that the abuse, neglect, sexual abuse or exploitation occurred by act or omission of any per-

son responsible for the child's welfare the Department shall refer the matter to the appropriate law enforcement agency and shall conclude its investigations and forward a copy of its findings to the appropriate law enforcement agency for that agency's further use in any criminal investigation. In each case where the Department forwarded a report of suspected abuse, neglect, sexual abuse or exploitation to any law enforcement agency, such agency shall notify the Department when a determination is made as to the identity of a perpetrator, regardless of whether criminal charges are to be filed. This notification shall occur within thirty (30) days of the receipt of the report by the law enforcement agency. If such notice identifies a person responsible for the child's welfare, the Department shall re-open and continue its investigation in compliance with all other requirements contained in this Act."

SECTION 3. Section 9 of Act 397 of 1975, the same being Arkansas Statute 42-814, is hereby amended to read as follows:

"Section 9. (A) Any person, official or institution participating in good faith in the making of a report, the taking of photographs or the removal of a child pursuant to this Act, shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any person required to report cases of child abuse, sexual abuse or neglect shall be presumed.

(B) Any person, official or institution willfully making a false report of suspected abuse, neglect, or sexual abuse knowing such allegations to be false, or with reckless disregard as to the truthfulness of such allegations, shall, upon conviction therefore, be subject to a fine of \$100.00 and up to five (5) days in jail. The Department or Prosecuting Attorney is empowered to file petitions in the appropriate Court seeking imposition of penalties for violation of this Section."

SECTION 4. Subsection (7) of Subsection (A) of Section 13 of Act 397 of 1975, the same being Arkansas Statute 42-818 (A) (7) is hereby amended to read as follows:

"(7) The Department of Human Services shall not release data that would

identify the person who made the report or who cooperated in a subsequent investigation unless a court of competent jurisdiction orders release of the information for good cause shown; provided, however, that such information shall be disclosed to the Prosecuting Attorney or law enforcement officers on request."

SECTION 5. Subsection (8) of Subsection (A) of Section 13 of Act 397 of 1975, the same being Arkansas Statute 42-818 (A) (8) is hereby amended to read as follows:

"(8) Records of all reports of abuse, neglect, sexual abuse, or exploitation shall be retained by the Child Abuse and Neglect Central Registry in accordance with the terms of this Act and shall be sealed when the youngest minor victim-subject of the report reaches the age of 21. Once sealed, the records shall not otherwise be available unless the Department, upon notice to the subjects of the report gives approval for an appropriate reason. Reports which were determined to be unfounded shall be expunged after three (3) years. The Department may, upon written application of an alleged perpetrator or an adult subject of a report amend information contained in a report in order to correct error or false statement. The Department shall promulgate regulations establishing a procedure for the filing of a request for amendment, for timely initial disposition of such request within 90 days of the completion of the investigation, and for appeals from unfavorable decisions.

SECTION 6. Section 5 of Act 1033 of 1985, the same being Arkansas Statute 42-819, is hereby amended to read as follows:

"Section 5. Reports made pursuant to this Act, as well as any other information obtained, and reports written or photographs taken concerning reports in the possession of the Department, as well as information concerning individuals assisted by the State of Arkansas as part of the State's adoption, foster care, or children's protective services program shall be confidential, and may be used or disclosed only for the following purposes: (A) If the report was determined to be founded disclosure is limited to: (1) The administration of the adoption, foster care, or children's protective services programs of the State of Arkansas; (2) Any investigation, or prosecution con-

ducted in connection with the administration of any such plan or program; (3) Any person who is the subject of a report; (4) A civil proceeding connected with the administration of such plan or program where the court determines that such information is necessary for the determination of an issue before the court; (5) The administration of any federal or federally assisted program which provides assistance, in case or in kind, or services, directly to individuals on the basis of need; (6) An audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; (7) Disclosure is prohibited to any committee or legislative body (other than an agency referred to in §42-813 with respect to an activity referred to in such clause) of any information which identifies by name or address, any such applicant or recipient; further, the Commissioner shall establish by regulation, criteria for the application of the criteria set forth in this Act. (B) If the report was determined to be unfounded disclosure is limited to: (1) The administration of the adoption, foster care, or children's protective services programs of the State of Arkansas; (2) Any person who is the subject of a report."

SECTION 7. Subsections (4), (5), (6) and (9) of Subsection (A) of Section 13 of Act 397 of 1975, as amended, the same being Arkansas Statute 42-818 (A) (4), (5), (6) and (9) are hereby repealed.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Carolyn Pollan et al

