

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Pollan and Wilkins

A Bill

HOUSE BILL 2076

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED 12-12-501, ET
SEQ., TO CLARIFY THE DUTIES AND RESPONSIBILITIES OF THE
DEPARTMENT OF HUMAN SERVICES IN REGARD TO CHILD ABUSE
REPORTING; AND FOR OTHER PURPOSES."

Subtitle

"TO CLARIFY THE DUTIES OF DHS IN REGARD
TO CHILD ABUSE REPORTING"

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

SECTION 1. Arkansas Code 12-12-503(1) is amended to read as follows:

"(1) Child or juvenile means an individual who:

(A) Is under the age of eighteen (18) years;

(B) Is under the age of twenty-one (21) years, whether married
or single, who was adjudicated delinquent under the Arkansas Juvenile Code
for an act committed prior to the age of eighteen (18) years and for whom the
court retains jurisdiction; or

(C) Was adjudicated dependent-neglected under the Arkansas
Juvenile Code before reaching the age of eighteen (18) years and who, while
engaged in a course of instruction or treatments, requests the court to
retain jurisdiction until the course has been completed;"

SECTION 2. Arkansas Code 12-12-503(9) is amended to read as follows:

"(9) 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,

1 child care facility, public or private school, or any person responsible for
2 a child's welfare;"

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4 SECTION 3. Arkansas Code 12-12-503(12) is amended to read as follows:

5 "(12) Subject of the report means the offender , the parents and
6 caretakers of the child who is subject to suspected maltreatment, and the
7 child who is the subject of suspected maltreatment; and"

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9 SECTION 4. Arkansas Code 12-12-504 is amended by adding the following
10 subsection:

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

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15 SECTION 5. Arkansas Code 12-12-505 is amended to read as follows:

16 "12-12-505. Central registry.

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

21 (b) Records of all cases where allegations are determined to be true
22 shall be retained by the central registry.

23 (c) The Central Registry may adopt such rules and regulations as may be
24 necessary to encourage cooperation with other states in exchanging true
25 reports, and to effect a national registration system."

26

27 SECTION 6. Arkansas Code 12-12-506 is amended to read as follows:

28 "12-12-506. Disclosure of central registry data.

29 (a) Reports made pursuant to this subchapter, shall be confidential
30 and may be used or disclosed only as provided in this section. If the
31 allegations are determined to be true in accordance with § 12-12-512,
32 disclosure is absolutely limited to:

33 (1) The administration of the adoption, foster care, children's
34 protective services programs, or child care licensing programs of any state.
35 Reports of investigative determinations which are true shall be disclosed to

1 the Child Care Facility Review Board by oral report only for purposes of
2 enforcement of licensing law and regulations;

3 (2) Any law enforcement investigation or criminal prosecution
4 conducted in connection with the provisions of this subchapter;

5 (3) Any person who is the subject of a true report;

6 (4) A civil or administrative proceeding connected with the
7 administration of the Arkansas Child Welfare State Plan where the court or
8 hearing officer determines the information is necessary for the determination
9 of an issue before the court or agency;

10 (5) The administration of any federal or federally assisted
11 program which provides assistance, in cash or in kind, or services directly
12 to individuals on the basis of need;

13 (6) An audit or similar activity conducted in connection with
14 the administration of such plan or program by any governmental agency which
15 is authorized by law to conduct the audit or activity;

16 (7) A person, agency or organization engaged in a bona fide
17 research or evaluation project, but without information identifying
18 individuals named in a report or record, provided that:

19 (A) having that information open for review is essential
20 to the research or evaluation;

21 (B) prior written approval is granted by the Director of
22 the Department of Human Services; and

23 (C) the child, through his parent, guardian, or guardian
24 ad litem gives permission to release the information;

25 (8) A properly constituted authority, including
26 multidisciplinary teams referenced in 12-12-502(b), investigating a report of
27 known or suspected child abuse or neglect or providing services to a child or
28 family which is the subject of a report;

29 (9) The Child Care Facility Review Board and the child care
30 facility owner or operator who requested the registry information through a
31 signed notarized release from an individual who is a volunteer or who has
32 applied for employment or who is currently employed by a child care facility
33 or who are the owner or operator of a child care facility. This disclosure
34 shall be for the limited purpose of providing central registry background
35 information and shall indicate a true finding only.

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

5 (c)(1) Any person or agency to whom disclosure is made shall not
6 disclose to any other person reports or other information obtained pursuant
7 to this subdivision.

8 (2)(A) Provided, however, that a local educational agency or a
9 school counselor shall forward all true reports of child maltreatment
10 received from the department whenever a child transfers from one local
11 educational agency to another, and shall notify the department of the child's
12 new school, and address, if known.

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

15 (d) Disclosure is prohibited to any committee or legislative body,
16 other than an agency referred to in §§ 12-12-507(e), 12-12-509 - 12-12-511
17 with respect to an activity referred to in such subdivision, of any
18 information which identifies by name or address, any applicant or recipient.

19 (e) The department shall not release data that would identify the
20 person who made the report or who cooperated in a subsequent investigation
21 unless a court of competent jurisdiction orders release of the information
22 for good cause shown. However, the information shall be disclosed to the
23 prosecuting attorney or law enforcement officers on request.

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

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29 SECTION 7. Arkansas Code 12-12-507(b) is amended to read as follows:

30 "(b) When any physician, surgeon, coroner, dentist, osteopath,
31 resident intern, licensed nurse, medical personnel who may be engaged in
32 admission, examination, care, or treatment of persons, teacher, school
33 official, school counselor, social worker, family service worker, day care
34 center worker, or any other child or foster care worker, mental health
35 professional, peace officer, law enforcement official, prosecuting attorney

1 or judge has reasonable cause to suspect that a child has been subjected to
2 child maltreatment, or that a child has died as a result of child
3 maltreatment, or who observes the child being subjected to conditions or
4 circumstances which would reasonably result in child maltreatment, he shall
5 immediately notify central intake or law enforcement."
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7 SECTION 8. Arkansas Code 12-12-507(f) is repealed.
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9 SECTION 9. Arkansas Code 12-12-509(c) is amended to read as follows:

10 "(c)(1) The investigation shall include interviews with the parents,
11 caretakers, as may be relevant to the alleged maltreatment, and the alleged
12 offender.

13 (2) The investigation shall include an interview with the child.
14 However, if the age or abilities of the child render an interview
15 impossible, the investigation shall include observation of the child.

16 (3) The investigation may include a physical examination and a
17 psychological or psychiatric examination of all children subject to the care,
18 custody, or control of the same caretaker.

19 (4) If, after exercising reasonable diligence in conducting any
20 or all interviews, the subjects of the interviews cannot be located or are
21 unable to communicate, the efforts to conduct such interviews shall be
22 documented and the investigation shall proceed pursuant to this subchapter."
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24 SECTION 10. Arkansas Code 12-12-511 is amended to read as follows:

25 "12-12-511. Investigation to be closed.

26 (a) If at any time before or during the investigation it is determined
27 that the alleged offender is not a caretaker of the alleged victim and the
28 alleged victim has attained majority prior to notification, the department's
29 investigation shall be closed.

30 (b) Any provision to the Arkansas Uniform Rules of Evidence
31 notwithstanding, any privilege between a minister and any person confessing
32 to or being counseled by the minister shall not constitute grounds for
33 excluding evidence at any dependent/neglect proceeding or proceedings
34 involving custody of a minor.

35 (1)(A) If at any time before or during the investigation it

1 appears that the offender is identified and is not a caretaker of the victim
2 child , the department shall refer the matter to the appropriate law
3 enforcement agency, close its investigation, and forward a copy of its
4 findings to the appropriate law enforcement agency for that agency's further
5 use in any criminal investigation.

6 (B) If the alleged offender is a juvenile, but not a
7 caretaker, law enforcement may refer the matter to the department for
8 investigation.

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

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

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16 SECTION 11. Arkansas Code 12-12-512 is amended to read as follows:

17 "12-12-512. Investigative determination - Notice of finding -
18 Amendment and appeal.

19 (a) Upon completion of the investigation the department shall
20 determine that the allegations of child maltreatment are:

21 (1) Unsubstantiated: This determination shall be entered when
22 the allegation is not supported by some credible evidence. There can be no
23 disclosure of unsubstantiated reports except for release to the prosecutor
24 for the limited purpose of prosecution of a person who willfully makes false
25 notification pursuant to this subchapter;

26 (2) True: This determination shall be entered when the
27 allegation is supported by some credible evidence;

28 (A) A determination of true shall not be entered when a
29 parent, practicing his religious beliefs, does not, for that reason alone,
30 provide medical treatment for a child, but in lieu of such treatment the
31 child is being furnished with treatment by spiritual means alone, through
32 prayer, in accordance with a recognized religious method of healing by an
33 accredited practitioner.

34 (B) Such prohibition shall not limit the administrative or
35 judicial authority of the state to ensure that medical services are provided

1 to the child when his health requires it.

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

4 (c)(1) In every case where a report is determined to be true , the
5 department shall notify each subject of the report of the determination.

6 (A) Notification shall be in writing by hand delivery or
7 by certified mail, restricted delivery.

8 (B) Such notification shall include the following:

9 (i) The investigative determination, true or
10 unsubstantiated, exclusive of the source of the notification, name of the
11 person making notification, occupation, and where they can be reached;

12 (ii) A statement that an adult subject of the true
13 report may request an administrative hearing; and

14 (iii) A statement that such request must be made
15 within thirty (30) days of receipt of the hand delivery or mailing of the
16 notice of determination.

17 (2) The administrative hearing process must be completed within
18 ninety (90) days from the date of the receipt of the request for a hearing.

19 (3) No action by appeal shall be brought more than two (2) years
20 after the completion of the investigation.

21 (4) When the department conducts such administrative appeal
22 hearings, the chief counsel of the department is authorized to require the
23 attendance of witnesses and the production of books, records, or other
24 documents through the issuance of subpoenas when such testimony or
25 information is necessary to adequately present the position of the Department
26 of Human Services, the investigating protective services agency, or the
27 alleged offender or adult subject of a report."

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29 SECTION 12. Arkansas Code 12-12-514(d) is amended to read as follows:

30 "(d) Notwithstanding any provision of this subchapter, the department
31 shall forward the investigative determination, exclusive of the source of the
32 notification, name of the person making notification, occupation, and where
33 they can be reached, to the parents and alleged offender by hand delivery or
34 by certified mail, restricted delivery, addressed to the recipient's last
35 known address."

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SECTION 13. Arkansas Code 12-12-515(b) is amended to read as follows:

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

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided."

SECTION 14. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 16. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Rep. Pollan, et al

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