

1 State of Arkansas

2 82nd General Assembly

3 Regular Session, 1999

A Bill

HOUSE BILL 1723

4
5 By: Representative Kidd

For An Act To Be Entitled

9 "AN ACT TO AMEND 12-12-512 OF THE CHILD MALTREATMENT
10 ACT; AND FOR OTHER PURPOSES."

Subtitle

13 "TO AMEND THE CHILD MALTREATMENT ACT."

15
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code 12-12-512 is amended to read as follows:

20 "12-12-512. Child maltreatment investigative determination - Notice of
21 finding - Amendment and appeal.

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

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

29 (2) True: This determination shall be entered when the allegation
30 is supported by some credible evidence.

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

(B) Notwithstanding subdivision (a)(2)(A) of this section, the department shall have the authority to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide 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 child with life-threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life-threatening conditions, case by case determinations concerning the exercise of authority of 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) In every case where a report is determined to be true, the department shall notify each subject of the report of the determination.

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

(C) Such notification shall include the following:

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

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

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

(iv) The name of the person making notification, his occupation, and where he can be reached.

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

(3) No action by appeal shall be brought more than two (2) years after the completion of the investigation with the following exception: if the offender or the department discovers new evidence which was not available or could not have been discovered or produced at the administrative hearing. Within thirty (30) days of discovery of the new evidence, the offender or the department shall petition for a rehearing. Said petition shall be accompanied by an affidavit outlining in detail the new evidence. Any supporting documentation shall be attached to the petition. The Administrative Law Judge

1 shall review the petition, affidavit and supporting documentation and shall
2 grant a rehearing only if the facts alleged, if found to be true, would
3 support a finding that the offender should either be removed from the central
4 registry because no credible evidence exists that the offender maltreated a
5 child or added to the central registry because some credible evidence exists
6 that the offender did maltreat a child. Newly discovered evidence that would
7 merely impeach or otherwise test the credibility of a witness is not a
8 sufficient reason to warrant a rehearing. The burden of proof shall be on the
9 petitioner. If the claim of new evidence is the recantation of the victim
10 child, the presumption shall be that the initial investigative determination
11 was correct and the offender must show beyond a reasonable doubt that the
12 victim child's initial statements were incorrect.

13 (4) When the department conducts such administrative appeal
14 hearings, the chief counsel of the department is authorized to require the
15 attendance of witnesses and the production of books, records, or other
16 documents through the issuance of subpoenas when such testimony or information
17 is necessary to adequately present the position of the Department of Human
18 Services, the investigating protective services agency, or the alleged
19 offender or adult subject of a report.

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

22
23 SECTION 2. All provisions of this act of a general and permanent nature
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
25 Revision Commission shall incorporate the same in the Code.

26
27 SECTION 3. If any provision of this act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given effect without
30 the invalid provision or application, and to this end the provisions of this
31 act are declared to be severable.

32
33 SECTION 4. All laws and parts of laws in conflict with this act are
34 hereby repealed.