

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1636

4  
5 By: Representative Dees  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND  
10 FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO AMEND THE CHILD MALTREATMENT  
14 ACT.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code § 12-12-501(b), concerning the purposes of  
20 the Child Maltreatment Act, is amended to read as follows:

21 (b) It is the purpose of this subchapter, ~~through the use of complete~~  
22 ~~reporting of child abuse,~~ to:

- 23 ~~(1) Protect the best interest of the child;~~  
24 ~~(2) Prevent further harm to the child;~~  
25 ~~(3) Stabilize the home environment;~~  
26 ~~(4) Preserve family life; and~~  
27 ~~(5) Encourage cooperation among the states in dealing with child~~

28 ~~abuse.~~

29 (1) Provide a system for the reporting of known or suspected  
30 child maltreatment;

31 (2) Ensure the immediate screening, safety assessment, and  
32 prompt investigation of reports of known or suspected child maltreatment;

33 (3) Ensure that immediate steps are taken to:

34 (A) Protect the maltreated child and any other child under  
35 the same care who may also be in danger of maltreatment; and

36 (B) Place endangered children in a safe environment;



1           (4) Provide for immunity from prosecution for those individuals  
2 making good faith reports of suspected child maltreatment;

3           (5) Preserve the confidentiality of all records in order to  
4 protect the rights of the child and of the child’s parents or guardians; and

5           (6) Encourage the cooperation of state law enforcement  
6 officials, courts, and state agencies in the investigation, assessment,  
7 prosecution, and treatment of child maltreatment.

8  
9           SECTION 2. Arkansas Code § 12-12-503 is amended to read as follows:  
10           12-12-503. Definitions.

11           As used in this subchapter, unless the context otherwise requires:

12           (1)(A) "Abandonment" means:

13                   ~~(A)~~(i) Failure of the parent to provide reasonable support  
14 and to maintain regular contact with the juvenile through statement or  
15 contact when the failure is accompanied by an intention on the part of the  
16 parent to permit the condition to continue for an indefinite period in the  
17 future;

18                   ~~(B)~~(ii) Failure to support or maintain regular contact  
19 with the juvenile without just cause; ~~or~~

20                   ~~(C)~~(iii) An articulated intent to forego parental  
21 responsibility; and

22                   (B) "Abandonment" does not include acts or omissions on behalf  
23 of a married minor.

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

32                   (i) Extreme or repeated cruelty to a juvenile;

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

36                   (iii) Injury to a juvenile’s intellectual, emotional, or

1 psychological development as evidenced by observable and substantial  
2 impairment of the juvenile's ability to function within the juvenile's normal  
3 range of performance and behavior;

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

6 (v) Any nonaccidental physical injury;

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

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

11 (b) Striking a child with a closed fist;

12 (c) Shaking a child; or

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

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

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

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

19 (c) Interfering with a child's breathing;

20 (d) Urinating or defecating on a child; or

21 (e) Pinching or striking a child in the genital  
22 area.

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

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

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

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

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

36 (b) The agency has policy and procedures regarding

1 restraints;

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

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

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

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

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

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

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

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

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

32 (5) "Child" or "juvenile" means an individual who+

33 ~~(A) Is~~ is from birth to the age of eighteen (18);

34 ~~(B) Is under the age of twenty one (21) years, whether married~~  
35 ~~or single, who was adjudicated delinquent under the Arkansas Juvenile Code of~~  
36 ~~1989, § 9-27-301 et seq., for an act committed prior to the age of eighteen~~

1 ~~(18) years, and for whom the court retains jurisdiction; or~~

2 ~~(C) Was adjudicated dependent neglected under the Arkansas~~  
 3 ~~Juvenile Code of 1989, § 9-27-301 et seq., before reaching the age of~~  
 4 ~~eighteen (18) years, and who, while engaged in a course of instruction or~~  
 5 ~~treatments, requests the court to retain jurisdiction until the course has~~  
 6 ~~been completed;~~

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

9 (7) "Department" means the Department of Human Services;

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

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

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

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

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

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

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

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

33 (12) "Neglect" means those acts or omissions of a parent, guardian,  
 34 custodian, foster parent, or any person who is entrusted with the juvenile's  
 35 care by a parent, custodian, guardian, or foster parent, including, but not  
 36 limited to, an agent or employee of a public or private residential home,

1 child care facility, public or private school, or any person legally  
 2 responsible under state law for the juvenile's welfare, but excluding the  
 3 spouse of a minor and the parents of the married minor, which constitute:

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

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

13 (C) Failure to take reasonable action to protect the juvenile  
 14 from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or  
 15 parental unfitness where the existence of such condition was known or should  
 16 have been known;

17 (D) Failure or irremediable inability to provide for the  
 18 essential and necessary physical, mental, or emotional needs of the juvenile;

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

21 (F) Failure, although able, to assume responsibility for the  
 22 care and custody of the juvenile or to participate in a plan to assume such  
 23 responsibility; or

24 (G) Failure to appropriately supervise the juvenile that results  
 25 in the juvenile's being left alone at an inappropriate age or in  
 26 inappropriate circumstances that put the juvenile in danger;

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

31 (14) "Pornography" means:

32 (A) Obscene or licentious material, including pictures, movies,  
 33 and videos, lacking serious literary, artistic, political, or scientific  
 34 value, which, when taken as a whole and applying contemporary community  
 35 standards would appear to the average person to appeal to the prurient  
 36 interest; or

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

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

7 (16) "Severe maltreatment" means sexual abuse, sexual exploitation,  
8 acts or omissions which may or do result in death, abuse involving the use of  
9 a deadly weapon as defined by the Arkansas Criminal Code, § 5-1-101 et seq.,  
10 bone fracture, internal injuries, burns, immersions, suffocation,  
11 abandonment, medical diagnosis of failure to thrive, or causing a substantial  
12 and observable change in the behavior or demeanor of the child;

13 (17) "Sexual abuse" means:

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

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

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

20 (iii) Indecent exposure; or

21 (iv) ~~Forcing, permitting, or encouraging~~ the watching of  
22 pornography or live sexual activity;

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

26 (i) Sexual intercourse, deviate sexual activity, or sexual  
27 contact or solicitation; or

28 (ii) Attempted sexual intercourse, deviate sexual  
29 activity, or sexual contact; ~~or~~

30 (C) ~~Between~~ By a sibling or caretaker to a person younger than  
31 eighteen (18) years of age ~~and a sibling or caretaker~~:

32 (i) Sexual intercourse, deviate sexual activity, or sexual  
33 contact or solicitation; or

34 (ii) Attempted sexual intercourse, deviate sexual  
35 activity, or sexual contact;

36 (D) By a caretaker to a person younger than eighteen (18) years

1 of age:

2 (i) Forcing, or encouraging the watching of pornography;

3 or

4 (ii) Forcing, permitting, or encouraging the watching of  
5 live sexual activity; or

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

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

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

12 (18)(A) "Sexual contact" means any act of sexual gratification  
13 involving the touching, directly or through clothing, of the sex organs,  
14 buttocks, or anus of a person or the breast of a female.

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

17 (19) "Sexual exploitation" means allowing, permitting, or encouraging  
18 participation or depiction of the juvenile in prostitution, obscene  
19 photographing, filming, or obscenely depicting a juvenile for any use or  
20 purpose; ~~and~~

21 (20) "Subject of the report" means:

22 (A) The offender;

23 (B) The parents, guardians, and legal custodians of the child  
24 who is subject to suspected maltreatment; and

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

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

29

30 SECTION 3. Arkansas Code § 12-12-505(a)(1)(B), concerning the central  
31 registry within the Department of Human Services is amended to read as  
32 follows:

33 (B) Records of all cases where allegations are determined  
34 to be unsubstantiated shall ~~be promptly expunged~~ not be included in the  
35 central registry.

36



1 SECTION 4. Arkansas Code § 12-12-505, concerning the Central Registry  
2 within the Department of Human Services, is amended to add an additional  
3 subsection to read as follows:

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

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

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

11  
12 SECTION 5. Arkansas Code § 12-12-506(a)(2)(A), concerning disclosure  
13 of Department of Human Services central registry data, is amended to read as  
14 follows:

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

17 (i) The administration of the adoption, foster care,  
18 children’s protective services programs, or child care licensing programs of  
19 any state;

20 (ii) Federal, state, or local government entities,  
21 or any agent of such entities, having a need for such information in order to  
22 carry out its responsibilities under law to protect children from abuse or  
23 neglect;

24 (iii) Any person who is the subject of a true  
25 report;

26 (iv) A civil or administrative proceeding connected  
27 with the administration of the Arkansas Child Welfare State Plan where the  
28 court or hearing officer determines that the information is necessary for the  
29 determination of an issue before the court or agency;

30 (v) The administration of any federal or federally  
31 assisted program which provides assistance, in cash or in kind, or services  
32 directly to individuals on the basis of need;

33 (vi) An audit or similar activity conducted in  
34 connection with the administration of such plan or program by any  
35 governmental agency which is authorized by law to conduct the audit or  
36 activity;

1 (vii) A person, agency, or organization engaged in a  
 2 bona fide research or evaluation project, but without information identifying  
 3 individuals named in a report or record, provided that:

4 (a) Having that information open for review is  
 5 essential to the research or evaluation;

6 (b) Prior written approval is granted by the  
 7 Director of the Department of Human Services; and

8 (c) The child, through his or her parent,  
 9 guardian, or guardian ad litem, gives permission to release the information;

10 (viii) A properly constituted authority, including  
 11 multidisciplinary teams referenced in § 12-12-502(b), investigating a report  
 12 of known or suspected child abuse or neglect or providing services to a child  
 13 or family that is the subject of a report;

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

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

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

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

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

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

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

1 (xv) Individual federal and state senators and  
 2 representatives and their staff members who agree not to allow any  
 3 redisclosure of information, provided that no disclosure shall be made to any  
 4 committee or legislative body of any information that identifies any  
 5 recipient of services by name or address;

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

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

11 (xviii)(a) Employers or volunteer agencies for  
 12 purposes of screening employees, applicants, or volunteers upon submission of  
 13 a signed, notarized release from the employee, applicant, or volunteer.

14 (b) Only information indicating whether or not  
 15 the registry contains any founded reports naming the employee, applicant, or  
 16 volunteer as an offender may be released to the employer or agency.

17  
 18 SECTION 6. Arkansas Code § 12-12-506(e), concerning disclosure of  
 19 Department of Human Services central registry data, is amended to read as  
 20 follows:

21 (e)(1) The department shall not release data that would identify the  
 22 person who made the report unless a court of competent jurisdiction orders  
 23 release of the information after the court has reviewed, in camera, the  
 24 record related to the report and has found ~~it has reason to believe that the~~  
 25 ~~reporter knowingly made a false report~~ disclosure is needed to prevent  
 26 execution of a crime or disclosure is necessary for prosecution of a crime,  
 27 however any person to whom the name of the reporter is disclosed is  
 28 prohibited from redisclosing this information, except as provided in  
 29 subdivision (e)(2) of this section.

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

32 (B) However, the information shall remain confidential  
 33 until criminal charges are filed.

34  
 35 SECTION 7. Arkansas Code § 12-12-506, concerning disclosure of  
 36 Department of Human Services central registry data, is amended to add an

1 additional subsection to read as follows:

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

4 (2) Information on pending investigations shall be released upon  
 5 request to:

6 (A) The department;

7 (B) Law enforcement;

8 (C) The prosecuting attorney's office;

9 (D) Multidisciplinary teams under §12-12-502;

10 (E) Any licensing or registering authority to the extent  
 11 necessary to carry out its official responsibilities, but the information  
 12 shall be maintained as confidential; and

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

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

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

20 (A) No seventy-two (72) hour hold has been exercised under  
 21 the Child Maltreatment Act, § 12-12-501, et seq., or pleadings filed pursuant  
 22 to the Arkansas Juvenile Code of 1989, § 9-27-301, et seq.;

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

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

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

30 (E) Waiting until completion of the investigation will not  
 31 jeopardize the health or safety of the child in the custody case;

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

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

1           (4)(A) Information on pending investigations may be released to  
 2 or disclosed in the juvenile division of the circuit court if the victim or  
 3 offender has an open dependency-neglect or family in need of services case  
 4 before the juvenile division of the circuit court in the following  
 5 circumstances:

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

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

13           (B) The juvenile division of the circuit court shall order  
 14 release or disclose only after:

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

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

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

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

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

30  
 31           SECTION 8. Arkansas Code § 12-12-507(b), concerning reports of  
 32 suspected child abuse or neglect, is amended to read as follows:

33           (b) When any of the following has reasonable cause to suspect that a  
 34 child has been subjected to child maltreatment or has died as a result of  
 35 child maltreatment, or who observes a child being subjected to conditions or  
 36 circumstances that would reasonably result in child maltreatment, he or she

1 shall immediately notify the child abuse hotline:

- 2 (1) Any child care worker or foster care worker;
- 3 (2) A coroner;
- 4 (3) A day care center worker;
- 5 (4) A dentist;
- 6 (5) A domestic abuse advocate;
- 7 (6) A domestic violence shelter employee;
- 8 (7) A domestic violence shelter volunteer;
- 9 (8) An employee of ~~the Division of Youth Services~~ of the
- 10 Department of Human Services;
- 11 (9) An employee working under contract for the Division of Youth
- 12 Services of the Department of Human Services;
- 13 (10) ~~A family service worker~~ Any foster parent;
- 14 (11) A judge;
- 15 (12) A law enforcement official;
- 16 (13) A licensed nurse;
- 17 (14) Any medical personnel who may be engaged in the admission,
- 18 examination, care, or treatment of persons;
- 19 (15) A mental health professional;
- 20 (16) An osteopath;
- 21 (17) A peace officer;
- 22 (18) A physician;
- 23 (19) A prosecuting attorney;
- 24 (20) A resident intern;
- 25 (21) A school counselor;
- 26 (22) A school official;
- 27 (23) A social worker;
- 28 (24) A surgeon; or
- 29 (25) A teacher.

31 SECTION 9. Arkansas Code § 12-12-507(f) and (g), concerning reports of  
 32 suspected child abuse or neglect, are amended to read as follows:

33 (f)(1) The child abuse hotline shall accept a report when the  
 34 allegations, if true, would constitute child maltreatment as defined in § 12-  
 35 12-503(6) and as long as sufficient identifying information is provided to  
 36 identify and locate the child or the family.

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

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

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

- 14 (A) Shaking a child age three (3) or younger;
- 15 (B) Striking a child age six (6) or younger on the face or  
16 on the head; or
- 17 (C) Interfering with a child's breathing;
- 18 (E) Urinating or defecating on a child; or
- 19 (F) Pinching or striking a child on the genital area.

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

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

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

- 29 ~~(A) Throwing, kicking, burning, biting, or cutting a~~  
30 ~~child;~~
- 31 ~~(B) Striking a child with a closed fist;~~
- 32 ~~(C) Shaking a child;~~
- 33 ~~(D) Interfering with a child's breathing; or~~
- 34 ~~(E) Striking a child on the face.~~

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

1 Arkansas.

2 (2) If the child or the child's family resides in another state,  
 3 the hotline shall screen out the report, transfer the report to the hotline  
 4 of the state where the child or the child's family resides or the incident  
 5 occurred, and send a copy to the appropriate investigating agency in Arkansas  
 6 to initiate courtesy interviews.

7 (3) If the incident occurred in Arkansas and the victim,  
 8 offender, or parents no longer reside in Arkansas, the hotline shall accept  
 9 the report and the Arkansas investigating agency shall contact the other  
 10 state and request a courtesy interview with the out-of-state subject of the  
 11 report.

12 (4)(A) If the hotline receives a report and the alleged offender  
 13 is a resident of the State of Arkansas and the report of child maltreatment  
 14 in the state or country in which the act occurred would also be child  
 15 maltreatment in Arkansas, the hot line shall refer the report to the  
 16 appropriate investigating agency within the state so that the Arkansas  
 17 investigative agency can investigate, alone or in concert with the  
 18 investigative agency of any other state or country that may be involved.

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

23 (C) The other state may also conduct an investigation in  
 24 this state that results in the offender being named in a true report in that  
 25 state and placed in the Central Registry in that state.

26

27 SECTION 10. Arkansas Code § 12-12-507 is amended to add an additional  
 28 section to read as follows:

29 (i)(1)(A) The department shall not release data that would identify  
 30 the person who made the report unless a court of competent jurisdiction  
 31 orders release of the information after the court has reviewed, in camera,  
 32 the record related to the report and has found that:

33 (i) Disclosure is needed to prevent execution of a  
 34 crime; or

35 (ii) Disclosure is necessary for prosecution of a  
 36 crime.



1                   (B) However no person to whom the name of the reporter is  
 2 disclosed may redisclose the information, except as under subdivision (i)(2)  
 3 of this subsection.

4                   (2)(A) The information shall be disclosed to the prosecuting attorney  
 5 or law enforcement officers upon request.

6                   (B) However the information remains confidential until criminal  
 7 charges are filed.

8  
 9                   SECTION 11. Arkansas Code § 12-12-509 is amended to read as follows:  
 10                   12-12-509. Investigation - Examinations of children.

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

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

16                   (B) However, if the notice contains an allegation of  
 17 severe maltreatment then the Department of Human Services shall immediately  
 18 notify law enforcement, and the department shall initiate an investigation in  
 19 cooperation with law enforcement agencies and the prosecuting attorney within  
 20 twenty-four (24) hours.

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

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

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

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

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

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

36                   (b)(1) ~~The~~ If the alleged offender is a family member or lives in the

1 home with the alleged victim, the investigation shall seek to ascertain:

2 ~~(1)~~(A) The existence, cause, nature, and extent of the  
3 child maltreatment;

4 ~~(2)~~(B) The existence and extent of previous injuries;

5 ~~(3)~~(C) The identity of the person responsible ~~therefor~~ the  
6 maltreatment;

7 ~~(4)~~(D) The names and conditions of other children in the  
8 home;

9 ~~(5)~~(E) The circumstances of the parents or caretakers of  
10 the child;

11 ~~(6)~~(F) The environment where the child resides;

12 ~~(7)~~(G) The relationship of the child or children with the  
13 parents or caretakers; and

14 ~~(8)~~(H) All other pertinent data.

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

17 (A) The existence, cause, nature, and extent of the  
18 child's maltreatment;

19 (B) The identity of the person responsible for the  
20 maltreatment;

21 (C) The existence and extent of previous maltreatment  
22 perpetrated by the alleged offender;

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

26 (E) If the report is determined to be true, an assessment  
27 of any other children previously or currently under the care of the alleged  
28 offender, to the extent practical, and whether these children have been  
29 maltreated or are at risk of maltreatment; and

30 (F) All other pertinent and relevant data.

31 (c)(1)(A) The investigation shall include interviews with the parents.

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

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

36 (2)(A) The investigation shall include an interview with the

1 child separate and apart from the alleged offender or any representative or  
 2 attorney for the alleged offender.

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

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

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

14 (d)(1) An investigative determination shall be made in each  
 15 investigation within thirty (30) days regardless of whether the investigation  
 16 is conducted by the Department of Human Services, the Family Protection Unit  
 17 of the Department of Arkansas State Police, or local law enforcement.

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

21  
 22 SECTION 12. Arkansas Code § 12-12-510(a) and (b), concerning  
 23 investigative powers under the Child Maltreatment Act, is amended to read as  
 24 follows:

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

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

31 (b) If necessary access or admission is denied, the department may  
 32 petition the proper juvenile division of ~~chancery~~ circuit court for an ex  
 33 parte order of investigation requiring the parent, caretaker, or persons  
 34 denying access to any place where the child may be to allow entrance for the  
 35 interviews, examinations, and investigations.

36

1 SECTION 13. Arkansas Code § 12-12-510, concerning investigative powers  
 2 under the Child Maltreatment Act, is amended to add an additional subsection  
 3 to read as follows:

4 (g) Upon request by the investigating agency, any school, day care  
 5 center, child care facility, residential facility, residential treatment  
 6 facility, or similar institution shall provide the investigator with the  
 7 name, date of birth, social security number, and last known address and phone  
 8 number of any person identified as an alleged offender if the alleged  
 9 maltreatment occurred at that school, center, or facility.

10  
 11 SECTION 14. Arkansas Code § 12-12-512(a), concerning child  
 12 maltreatment investigative determinations, is amended to read as follows:

13 (a) Upon completion of the investigation, the Department of Human  
 14 Services shall determine that the allegations of child maltreatment are:

15 (1)(A) Unsubstantiated.

16 (B) This determination shall be entered when the  
 17 allegation is not supported by a preponderance of the evidence.

18 (C) There can be no disclosure of unsubstantiated reports  
 19 except:

20 (i) ~~For release to the prosecutor for the limited~~  
 21 ~~purpose of prosecution of a person who willfully makes false notification~~  
 22 ~~pursuant to this subchapter~~ To the prosecutor;

23 (ii) To a subject of the report; ~~and~~

24 (iii) To a court if the information in the record is  
 25 necessary for a determination of an issue before the court; ~~or~~

26 (iv) To individual federal and state senators and  
 27 representatives and their staff members, but no disclosure may be made to any  
 28 committee or legislative body;

29 (v) To law enforcement agencies; and

30 (vi) To any appropriate licensing or registering  
 31 authority;

32 (D) Any person or agency to whom disclosure is made shall  
 33 not disclose to any other person reports or other information obtained  
 34 pursuant to this section; or

35 (2)(A) True.

36 (B) This determination shall be entered when the

1 allegation is supported by a preponderance of the evidence.

2 (C) A determination of true shall not be entered ~~when~~ if:

3 (i) ~~a~~ A parent practicing his or her religious  
4 beliefs does not, for that reason alone, provide medical treatment for a  
5 child, but in lieu of ~~such~~ treatment the child is being furnished with  
6 treatment by spiritual means alone, through prayer, in accordance with a  
7 recognized religious method of healing by an accredited practitioner; or

8 (ii) The offender is an underaged juvenile  
9 aggressor.

10 (D)(i) Notwithstanding subdivision (a)(2)(A) of this  
11 section, the department shall have the authority to pursue:

12 (a) Any legal remedies, including the  
13 authority to initiate legal proceedings in a court of competent jurisdiction;  
14 and

15 (b) Medical care or treatment for a child when  
16 such care or treatment is necessary to prevent or remedy serious harm to the  
17 child or to prevent the withholding of medically indicated treatment from a  
18 child with life-threatening conditions.

19 (ii) Except with respect to the withholding of  
20 medically indicated treatments from disabled infants with life-threatening  
21 conditions, case-by-case determinations concerning the exercise of authority  
22 in this subsection shall be within the sole discretion of the department.

23  
24 SECTION 15. Arkansas Code § 12-12-512(c), concerning child  
25 maltreatment investigative determinations, is amended to read as follows:

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

28 (ii) If the offender is a juvenile aged ten (10) or  
29 older and is in foster care, the department shall notify the juvenile's  
30 public defender or counsel for the juvenile, and the legal parents or legal  
31 guardians of the offender.

32 (iii) If the offender is a juvenile aged (10) or  
33 older, the department shall notify the legal parents or legal guardians of  
34 the offender.

35 (B) Notification shall be in writing by certified mail,  
36 restricted delivery, or by a process server.

(C) Notification 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 hand delivery or mailing of the notice of determination; and

(iv) The name of the person making notification, the person's occupation, and where he or she can be reached.

(2) The administrative hearing process must be completed within ~~ninety (90)~~ one hundred eighty (180) days from the date of the receipt of the request for a hearing, provided that:

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

(B) Failure to complete the hearing process in a timely fashion shall not deprive the department or a court reviewing the child maltreatment determination of jurisdiction to make a final agency determination or review a final agency determination pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(C)(i) The ~~ninety-day~~ one hundred eighty-day limit shall not apply if there is an ongoing criminal investigation or criminal 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 proceedings.

(iii) It shall be the duty of the petitioner to report the final disposition of the criminal proceeding to the department.

(iv) Each report shall include a file-marked copy of the criminal disposition.

(v) The request for administrative hearing shall be deemed waived if the petitioner fails to report the disposition of the criminal proceedings within thirty (30) days of the entry of a dispositive judgment or order.

(vi) If the criminal proceedings have reached no

1 final outcome within twelve (12) months of the filing of the administrative  
2 appeal, the administrative appeal will be deemed waived if the petitioner  
3 fails to provide a written statement of the status of the criminal  
4 proceedings every sixty (60) days and a disposition report within thirty (30)  
5 days of the entry of a dispositive judgment or order.

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

8 ~~(4)~~(3) When the department conducts such administrative appeal  
9 hearings, the chief counsel of the department is authorized to require the  
10 attendance of witnesses and the production of books, records, or other  
11 documents through the issuance of subpoenas when such testimony or  
12 information is necessary to adequately present the position of the  
13 department, the investigating protective services agency, or the alleged  
14 offender or adult subject of a report.

15  
16 SECTION 16. Arkansas Code § 12-12-514(c), concerning child  
17 maltreatment investigative reports, is amended to read as follows:

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

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

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

26 (3) If the investigative determination is true and the victim or  
27 offender is in foster care, notification of the investigative determination  
28 shall be provided to the juvenile division of circuit court judge, the  
29 juvenile division court appointed attorneys ad litem of the victim and  
30 offender, Court Appointed Special Advocates if appointed in an open  
31 dependency-neglect case, and the legal parents of the victim or offender who  
32 is in foster care.

33  
34 SECTION 17. Arkansas Code § 12-12-515 is amended to read as follows:

35 12-12-515. Provision of information to person or agency making initial  
36 notification of suspected maltreatment.

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

6 (A) The investigative determination; and

7 (B) Services offered and provided.

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

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

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

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

28 (2) This information may include:

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

31 (B) The services offered and provided.

32  
 33 SECTION 18. Arkansas Code § 12-12-516(a), concerning protective  
 34 custody of children under the Child Maltreatment Act, is amended to read as  
 35 follows:

36 (a)(1) A police officer, a law enforcement official, a juvenile



1 division of circuit court judge during juvenile proceedings concerning the  
2 child or siblings of the child, or a designated employee of the Department of  
3 Human Services may take a child into protective custody or any person in  
4 charge of a hospital or similar institution or any physician treating a child  
5 may keep that child in his or her custody without the consent of the parent  
6 or the guardian, whether or not additional medical treatment is required, if  
7 the child is ~~dependent-neglected, as defined in § 9-27-303(15)~~ dependent as  
8 defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et. seq., or if the  
9 circumstances or conditions of the child are such that continuing in his or  
10 her place of residence or in the care and custody of the parent, guardian,  
11 custodian, or caretaker presents an immediate danger of severe maltreatment.

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