

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2432

By: Representative Schulte

For An Act To Be Entitled

AN ACT TO PROVIDE JUDICIAL RELIEF TO A PERSON WHO
CAN ESTABLISH THAT AN ALLEGATION OF CHILD
MALTREATMENT IS NOT SUPPORTED BY THE
PREPONDERANCE OF THE EVIDENCE; AND FOR OTHER
PURPOSES.

Subtitle

TO PROVIDE JUDICIAL RELIEF TO A PERSON
WHO CAN ESTABLISH THAT AN ALLEGATION OF
CHILD MALTREATMENT IS NOT SUPPORTED BY
THE PREPONDERANCE OF THE EVIDENCE.

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

SECTION 1. Arkansas Code Title 12, Chapter 12, Subchapter 3 is amended
to add an additional section to read as follows:

12-12-520. Judicial relief.

(a) In addition to other relief provided under state and federal law,
a person may petition the circuit court of the county in which the person
resides or the Pulaski County Circuit Court for a de novo review if:

(1) The Department of Human Services has made a true finding of
child maltreatment against the person under this subchapter; or

(2) If a criminal investigation has been initiated, then:

(A) The person has not been convicted of, pleaded guilty
to, or pleaded nolo contendere to an offense related to a true finding of
child maltreatment against the person under this subchapter and that true
finding forms the basis of the cause of action under this section; and



(B) The criminal investigation has been pending for twelve (12) months and has not reached a conclusion related to a true finding of child maltreatment that forms the basis of the cause of action under this section.

(b) An action under this section shall be commenced within one (1) year after the following, whichever date is latest:

(1) The date that the person was notified of the true finding of child maltreatment under § 12-12-512(c);

(2) The date that the administrative hearing process under § 12-12-512 is completed;

(3) The date that the criminal investigation is concluded; or

(4) Twelve (12) months after the criminal investigation was initiated without reaching a conclusion.

(c) To establish a claim under this section, the petitioner shall establish:

(1) That the allegation of child maltreatment is not supported by the preponderance of the evidence;

(2) Damages, if applicable; and

(3) Other relief as provided under subsection (e) of this section if applicable.

(d) Damages under this section shall include, but not be limited to, the following:

(1) Compensatory damages to compensate the petitioner for:

(A) Loss of income;

(B) Mental anguish;

(C) Loss of dignity; or

(D) Other intangible injuries;

(2) Punitive damages, but only in the case where the petitioner establishes that:

(A) The conduct of the Department of Human Services would probably result in the injury or damage alleged in the petition; and

(B) The Department of Human Services:

(i) Continued the conduct alleged in the petition;

(ii) Failed to correct the conduct alleged in the petition that caused harm to the petitioner after notice of the issue; or

(iii) Otherwise acted with malice or in reckless

1 disregard of the consequences from which malice may be inferred related to
2 the handling of the child maltreatment matter that resulted in a true finding
3 of child maltreatment under this subchapter.

4 (3) Attorney's fees for representation in circuit court and at
5 administrative proceedings related to the child maltreatment report that
6 forms the basis of the cause of action under this section if applicable; and

7 (4) Costs associated with the circuit court and administrative
8 proceedings related to the child maltreatment report that forms the basis of
9 the cause of action under this section.

10 (e) In addition to damages, a petitioner under this section may seek
11 any of the following:

12 (1) An order requiring the Department of Human Services to:

13 (A) Remove the true finding of child maltreatment against
14 the petitioner from the Child Maltreatment Central Registry; or

15 (B) Change the determination of the true finding of child
16 maltreatment against the petitioner to an unsubstantiated finding against the
17 petitioner in the Child Maltreatment Central Registry;

18 (2) An order requiring the Department of Human Services or the
19 State of Arkansas to relinquish custody of the petitioner's child;

20 (3) An order that returns custody of the petitioner's child to
21 the petitioner; or

22 (4) An order that requires the Department of Human Services or
23 other entity that conducted or participated in the child maltreatment
24 investigation to destroy all documentation related to the report of child
25 maltreatment against the petitioner.