

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 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 392

4  
5 By: Senator Madison  
6 By: Representative Borhauer

## For An Act To Be Entitled

7  
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9  
10 AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND  
11 FOR OTHER PURPOSES.

## Subtitle

12  
13  
14 TO AMEND THE CHILD MALTREATMENT ACT.

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

18  
19 SECTION 1. Arkansas Code § 12-12-503 is amended to read as follows:  
20 12-12-503. Definitions.

21 As used in this subchapter:

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

23 (i) Failure of a parent to:

24 (a) Provide reasonable support and to maintain  
25 regular contact with a juvenile through statement or contact when the failure  
26 is accompanied by an intention on the part of the parent to permit the  
27 condition to continue for an indefinite period in the future;

28 (b) Support or maintain regular contact with a  
29 juvenile without just cause; ~~and~~ or

30 (ii) An articulated intent to forego parental  
31 responsibility.

32 (B) "Abandonment" does not include acts or omissions of a  
33 parent toward a married minor.

34 (2)(A) "Abuse" means any of the following acts or omissions by a  
35 parent, guardian, custodian, foster parent, person eighteen (18) years of age  
36 or older living in the home with a child whether related or unrelated to the



1 child, or any person who is entrusted with the juvenile's care by a parent,  
 2 guardian, custodian, or foster parent, including, but not limited to, an  
 3 agent or employee of a public or private residential home, child care  
 4 facility, public or private school, or any person legally responsible for the  
 5 juvenile's welfare, but excluding the spouse of a minor:

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

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

10 (iii) Injury to a juvenile's intellectual,  
 11 emotional, or psychological development as evidenced by observable and  
 12 substantial impairment of the juvenile's ability to function within the  
 13 juvenile's normal range of performance and behavior;

14 (iv) Any injury that is at variance with the history  
 15 given;

16 (v) Any nonaccidental physical injury;

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

19 (a) Throwing, kicking, burning, biting, or  
 20 cutting a child;

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

22 (c) Shaking a child; or

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

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

26 (a) Striking a child age six (6) or younger on  
 27 the face or head;

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

29 (c) Interfering with a child's breathing; ~~or~~

30 (d) Pinching, biting, or striking a child in  
 31 the genital area;

32 (e) Unreasonable restriction of a child's  
 33 mobility, actions, or physical functioning such as tying the child to a fixed  
 34 or heavy object or tying the child's limbs together;

35 (f) Giving a child or permitting a child to  
 36 consume or inhale a poisonous or noxious substance not prescribed by a

1 physician that has the capacity to interfere with normal physiological  
2 functions;

3 (g) Giving a child or permitting a child to  
4 consume or inhale a substance not prescribed by a physician that has the  
5 capacity to alter the mood of the child, including, but not limited to, the  
6 following:

7 (1) Marijuana;

8 (2) Alcohol;

9 (3) Narcotics; or

10 (4) Over-the-counter drugs if an  
11 incorrect dosage or inappropriate drug is knowingly given to a child;

12 (h) Exposing a child to chemicals that have  
13 the capacity to interfere with normal physiological functions, including, but  
14 not limited to, chemicals used or generated during the manufacture of  
15 methamphetamine; or

16 (i) Subjecting a child to Munchausen's  
17 Syndrome by Proxy or a Factitious Illness by Proxy if the incident is  
18 reported and confirmed by medical personnel or a medical facility.

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

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

23 (C)(i) "Abuse" shall not include physical discipline of a  
24 child when it is reasonable and moderate and is inflicted by a parent, court-  
25 appointed custodian, or court-appointed guardian for purposes of restraining  
26 or correcting the child.

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

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

33 (b) The agency has policy and procedures  
34 regarding restraints;

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

1 (d) The child is in danger or hurting himself  
2 or herself or others;

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

6 (f) The restraint is for a reasonable period  
7 of time.

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

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

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

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

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

29 (5) "Child" or "juvenile" means an individual who is from birth  
30 to the age of eighteen (18);

31 (6) "Child maltreatment" means abuse, sexual abuse, neglect,  
32 sexual exploitation, or abandonment;

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

34 (8) "Deviate sexual activity" means any act of sexual  
35 gratification involving:

36 (A) Penetration, however slight, of the anus or mouth of

1 one person by the penis of another person; or

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

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

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

10 (B) The age, developmental stage, and stature of the  
11 victim and the relationship of the victim to the assailant, as well as the  
12 threat of deprivation of affection, rights, and privileges from the victim by  
13 the assailant, shall be considered in weighing the sufficiency of the  
14 evidence to prove compulsion;

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

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

21 (12) "Neglect" means those acts or omissions of a parent,  
22 guardian, custodian, foster parent, or any person who is entrusted with the  
23 juvenile's care by a parent, custodian, guardian, or foster parent,  
24 including, but not limited to, an agent or employee of a public or private  
25 residential home, child care facility, public or private school, or any  
26 person legally responsible under state law for the juvenile's welfare, but  
27 excluding the spouse of a minor and the parents of the married minor, which  
28 constitute:

29 (A) Failure or refusal to prevent the abuse of the  
30 juvenile when the person knows or has reasonable cause to know the juvenile  
31 is or has been abused;

32 (B) Failure or refusal to provide necessary food,  
33 clothing, sanitary shelter, and education required by law, excluding the  
34 failure to follow an individualized educational program, or medical treatment  
35 necessary for the juvenile's well-being, except when the failure or refusal  
36 is caused primarily by the financial inability of the person legally

1 responsible and no services for relief have been offered ~~or rejected~~;

2 (C) Failure to take reasonable action to protect the  
3 juvenile from environmental health hazards, abandonment, abuse, sexual abuse,  
4 sexual exploitation, neglect, or parental unfitness when the existence of the  
5 condition was known or should have been known;

6 (D) Failure or irremediable inability to provide for the  
7 essential and necessary physical, mental, or emotional needs of the juvenile  
8 including the failure to provide a shelter that does not pose a risk to the  
9 health or safety of the juvenile;

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

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

16 (G) Failure to appropriately supervise the juvenile that  
17 results in the juvenile's being left alone at an inappropriate age or in  
18 inappropriate circumstances ~~that put the juvenile in danger~~ creating a  
19 dangerous situation or a situation that puts the child at risk of harm;

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

24 (14) "Pornography" means:

25 (A) ~~Obscene or licentious material, including pictures,~~  
26 ~~movies, and videos, lacking serious literary, artistic, political, or~~  
27 ~~scientific value, which, when taken as a whole and applying contemporary~~  
28 ~~community standards, would appear to the average person to appeal to the~~  
29 ~~prurient interest~~ Pictures, movies, or videos that lack serious literary,  
30 artistic, political, or scientific value and that, when taken as a whole and  
31 applying contemporary community standards, would appear to the average person  
32 to appeal to the prurient interest; ~~or~~

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

36 (C) Obscene or licentious material;

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

5           (16) "Severe maltreatment" means sexual abuse, sexual  
 6 exploitation, acts, or omissions which may or do result in death, abuse  
 7 involving the use of a deadly weapon as defined by § 5-1-102(4), bone  
 8 fracture, internal injuries, burns, immersions, suffocation, abandonment,  
 9 medical diagnosis of failure to thrive, or causing a substantial and  
 10 observable change in the behavior or demeanor of the child;

11           (17) "Sexual abuse" means:

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

14                           (i) Sexual intercourse, deviate sexual activity, or  
 15 sexual contact by forcible compulsion;

16                           (ii) Attempted sexual intercourse, deviate sexual  
 17 activity, or sexual contact by forcible compulsion;

18                           (iii) Indecent exposure; or

19                           (iv) Forcing the watching of pornography or live  
 20 sexual activity;

21                   (B) By a person eighteen (18) years of age or older to a  
 22 person not his or her spouse who is younger than sixteen (16) years of age:

23                           (i) Sexual intercourse, deviate sexual activity, or  
 24 sexual contact ~~or solicitation~~; or

25                           (ii) Attempted sexual intercourse, deviate sexual  
 26 activity, or sexual contact;

27                   (C) By a sibling or caretaker to a person younger than  
 28 eighteen (18) years of age:

29                           (i) Sexual intercourse, deviate sexual activity, or  
 30 sexual contact ~~or solicitation~~; or

31                           (ii) Attempted sexual intercourse, deviate sexual  
 32 activity, or sexual contact;

33                   (D) By a caretaker to a person younger than eighteen (18)  
 34 years of age:

35                           (i) Forcing or encouraging the watching of  
 36 pornography; or

1 (ii) Forcing, permitting, or encouraging the  
2 watching of live sexual activity; or

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

5 (i) Sexual intercourse, deviate sexual activity, or  
6 sexual contact by forcible compulsion; or

7 (ii) Attempted sexual intercourse, deviate sexual  
8 activity, or sexual contact by forcible compulsion;

9 (18)(A)(i) "Sexual contact" means any act of sexual  
10 gratification involving:

11 (a) the The touching, directly or through  
12 clothing, of the sex organs, buttocks, or anus of a person or the breast of a  
13 female;

14 (b) The encouraging of the child to touch the  
15 offender in a sexual manner; or

16 (c) The offender requesting to touch the child  
17 in a sexual manner.

18 (ii) Since sexual gratification is rarely capable of  
19 proof by direct evidence, evidence of sexual gratification shall be inferred  
20 from the attendant circumstances surrounding the investigation of the  
21 specific complaint of child maltreatment.

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

24 (19) "Sexual exploitation" means allowing, permitting, or  
25 encouraging participation or depiction of the ~~juvenile~~ child in prostitution,  
26 obscene photographing or filming, or obscenely depicting, obscenely posing,  
27 or obscenely posturing a juvenile child for any use or purpose;

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

29 (A) The offender;

30 (B) The custodial and noncustodial parents, guardians, and  
31 legal custodians of the child who is subject to suspected maltreatment; and

32 (C) The child who is the subject of suspected  
33 maltreatment; and

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



1  
2 SECTION 2. Arkansas Code § 12-12-505(b)(1)(A), regarding the Child  
3 Maltreatment Central Registry, is amended to read as follows:

4 (b)(1)(A)(i) Records of all cases where allegations are determined to  
5 be true shall be retained by the central registry.

6 (ii) If an offender is ~~criminally convicted for~~  
7 found guilty of, pleads guilty to, or pleads nolo contendere to an act which  
8 is the same act for which the offender is named in the central registry  
9 regardless of any subsequent expungement of the offense from the offender's  
10 criminal record, the offender shall always remain in the central registry.

11 (iii) The department shall identify in its policy  
12 and procedures manual the types of child maltreatment that will automatically  
13 result in the removal of the name of an offender from the central registry.  
14 If an offender has been entered into the central registry as an offender for  
15 these named types of child maltreatment, the offender's name shall be removed  
16 from the central registry on reports of this type of child maltreatment when  
17 the offender has not had a subsequent true report of this type for one (1)  
18 year and more than one (1) year has lapsed since the closure of any  
19 protective services or foster care case opened as the result of this report.

20 (iv)(a) The department shall identify in its policy  
21 and procedures manual the types of child maltreatment for which an offender  
22 can request that the offender's name be removed from the central registry.

23 (b) If an offender has been entered into the  
24 central registry as an offender for these named types of child maltreatment,  
25 the offender may petition the department requesting that the offender's name  
26 be removed from the central registry when the offender has not had a  
27 subsequent true report of this type for five (5) years and more than five (5)  
28 years have elapsed since the closure of any protective services or foster  
29 care case opened as the result of this report.

30 (c) The department shall develop policy and  
31 procedures to assist it in determining whether or not to remove the  
32 offender's name from the central registry.

33 (d) If the department denies the request for  
34 removal of the name from the central registry, the offender may request an  
35 administrative hearing within thirty (30) days from receipt of the  
36 department's decision.

1  
2 SECTION 3. Arkansas Code § 12-12-506(a)(1), regarding the disclosure  
3 of central registry data, is amended to read as follows:

4 (a)(1) Reports made pursuant to this subchapter shall be confidential  
5 and ~~may~~ shall be used or disclosed only as provided in this section.

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

8 (i) The administration of the adoption, foster care,  
9 children's and adult protective services programs, or child care licensing  
10 programs of any state;

11 (ii) A federal, state, or local government entity,  
12 or any agent of the entity, having a need for the information in order to  
13 carry out their responsibilities under law to protect children from abuse or  
14 neglect;

15 (iii) Any person who is the subject of a true  
16 report;

17 (iv) A civil or administrative proceeding connected  
18 with the administration of the Arkansas Child Welfare State Plan when the  
19 court or hearing officer determines that the information is necessary for the  
20 determination of an issue before the court or agency;

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

24 (vi) An audit or similar activity conducted in  
25 connection with the administration of such a plan or program by any  
26 governmental agency that is authorized by law to conduct the audit or  
27 activity;

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

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

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

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

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

5 (ix)(a) The Division of Child Care and Early  
6 Childhood Education of the Department of Human Services and the child care  
7 facility owner or operator who requested the registry information through a  
8 signed notarized release from an individual who is a volunteer or who has  
9 applied for employment or who is currently employed by a child care facility  
10 or who is the owner or operator of a child care facility.

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

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

16 (xi) Child fatality review panels as authorized by  
17 the department;

18 (xii) The general public, the findings or  
19 information about the case of child abuse or neglect that has resulted in a  
20 child fatality or near fatality, but the central registry may redact any  
21 information concerning siblings, attorney-client communications, and other  
22 confidential communications;

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

26 (xiv) The current foster parents of a child who is a  
27 subject of a report;

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

33 (xvi) A court-appointed special advocate upon  
34 presentation of an order of appointment for a child who is a subject of a  
35 report;

36 (xvii) The attorney ad litem of a child who is the

1 subject of a report; ~~and~~

2 (xviii)(a) Employers or volunteer agencies for  
3 purposes of screening employees, applicants, or volunteers who are or will be  
4 engaged in employment or activity with children, the elderly, the disabled,  
5 or the mentally ill upon submission of a signed, notarized release from the  
6 employee, applicant, or volunteer.

7 (b) The registry shall release only the  
8 following information on founded reports to the employer or agency:

9 (1) That the employee, applicant, or  
10 volunteer has a founded report;

11 (2) The date the investigation was  
12 completed; and

13 (3) The type of founded report; and

14 (xix) The United States Department of Homeland  
15 Security on all undocumented persons, including, but not limited to, illegal  
16 aliens.

17 (B) Reports of investigative determinations that are true  
18 shall be disclosed to the division, by written report only, for purposes of  
19 enforcement of licensing laws and regulations.

20  
21 SECTION 4. Arkansas Code § 12-12-506(i), regarding the disclosure of  
22 central registry data, is amended to read as follows:

23 (i) Any records of screened-out reports of child  
24 maltreatment shall not be disclosed, except to the prosecuting attorney and  
25 appropriate law enforcement agencies, and may only be used within the  
26 department for purposes of administration of the program.

27  
28 SECTION 5. Arkansas Code § 12-12-506(j)(2), regarding the disclosure  
29 of central registry data, is amended to read as follows:

30 (2) Information on pending investigations shall be released upon  
31 request to:

- 32 (A) The department;
- 33 (B) Law enforcement;
- 34 (C) The prosecuting attorney's office;
- 35 (D) Multidisciplinary teams under § 12-12-502;
- 36 (E) Any licensing or registering authority including

1 school boards, superintendents, or principals to the extent necessary to  
 2 carry out ~~its~~ their official responsibilities, but the information shall be  
 3 maintained as confidential; and

4 (F)(i) Individual federal and state senators and  
 5 representatives and their staff members who agree not to allow any  
 6 redisclosure of information.

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

9  
 10 SECTION 6. Arkansas Code § 12-12-507(d), regarding reports of  
 11 suspected abuse or neglect, is amended to read as follows:

12 (d)(1) ~~In the event that~~ If the child abuse hotline receives  
 13 notification that a client or a resident of any facility licensed or  
 14 registered by the State of Arkansas has been subjected to child maltreatment  
 15 while at such a facility, then the Department of Human Services shall  
 16 immediately notify that facility's licensing or registering authority of its  
 17 receipt of initial notification of suspected maltreatment.

18 (2) The department may notify a school's superintendent,  
 19 principal, or person in an equivalent position of the hotline's receipt of  
 20 initial notification of suspected maltreatment if:

21 (A) The child abuse hotline receives notification that a  
 22 public or private school employee or volunteer having direct or unsupervised  
 23 contact with children has been identified as an alleged offender in a report  
 24 of suspected child maltreatment; and

25 (B) The department has determined that children under the  
 26 care of the alleged offender appear to be at risk of maltreatment by the  
 27 alleged offender.

28 (3) The department may notify the alleged offender's employer or  
 29 the person in charge of the activity of the hotline's receipt of initial  
 30 notification of suspected maltreatment if:

31 (A) The child abuse hotline receives notification that a  
 32 report has been received on a person who is engaged in child-related  
 33 activities or employment and that person has been named as an alleged  
 34 offender; and

35 (B) The department has determined that children under the  
 36 care of the alleged offender appear to be at risk of maltreatment by the

1 alleged offender.

2

3 SECTION 7. Arkansas Code § 12-12-507(f), regarding reports of  
4 suspected abuse or neglect, is amended to read as follows:

5 (f)(1) The child abuse hotline shall accept a report when the  
6 allegations, if true, would constitute child maltreatment as defined in § 12-  
7 12-503(6) and as long as sufficient identifying information is provided to  
8 identify and locate the child or the family.

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

- 13 (A) Throwing, kicking, burning, biting, or cutting a  
14 child;
- 15 (B) Striking a child with a closed fist;
- 16 (C) Shaking a child age four (4) or older; or
- 17 (D) Striking a child age seven (7) or older on the face or  
18 on the head.

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

- 22 (A) Shaking a child age three (3) or younger;
- 23 (B) Striking a child age six (6) or younger on the face or  
24 on the head;
- 25 (C) Interfering with a child's breathing; or
- 26 (D) Pinching or striking a child in the genital area.

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

29 (B) The report shall be determined not to be true if the  
30 injury is a minor temporary mark or causes transient pain and was an  
31 acceptable restraint as provided in § 12-12-503(2)(C)(ii).

32 (5)(A) The child abuse hotline shall accept a report of abuse  
33 involving a bruise to a child even if at the time of the report the bruise is  
34 not visible but the bruising occurred within the past thirty (30) days.

35 (B) However, the report shall not be determined to be true  
36 unless the bruise is corroborated.

1           (6) The child abuse hotline shall only accept reports of child  
 2 maltreatment naming an adult as the victim if:

3                   (A) The alleged offender is a caretaker of any child; and

4                   (B) The person making the report is one (1) of the  
 5 following:

6                           (i) The adult victim;

7                           (ii) A law enforcement officer;

8                           (iii) The victim's counselor or therapist; or

9                           (iv) The offender's counselor or therapist.

10  
 11           SECTION 8. Arkansas Code § 12-12-507(g), regarding reports of  
 12 suspected abuse or neglect, is amended to read as follows:

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

16                   (2) If the child or the child's family resides in another state,  
 17 the hotline shall screen out the report, transfer the report to the hotline  
 18 of the state where the child or the child's family resides or the incident  
 19 occurred, and, if requested by the other state's investigating agency, send a  
 20 copy to the appropriate investigating agency in Arkansas to initiate ~~courtesy~~  
 21 interviews.

22                   (3) If the incident occurred in Arkansas and the victim,  
 23 offender, or parents no longer reside in Arkansas, the hotline shall accept  
 24 the report and the Arkansas investigating agency shall contact the other  
 25 state and request ~~a courtesy~~ assistance in completing the investigation,  
 26 including an interview with the out-of-state subject of the report.

27                   (4)(A) If the hotline receives a report and the alleged offender  
 28 is a resident of the State of Arkansas and the report of child maltreatment  
 29 in the state or country in which the act occurred would also be child  
 30 maltreatment in Arkansas at the time the incident occurred, the hotline shall  
 31 refer the report to the appropriate investigating agency within the state so  
 32 that the Arkansas investigative agency can investigate, alone or in concert  
 33 with the investigative agency of any other state or country that may be  
 34 involved.

35                           (B) The Arkansas investigating agency shall make an  
 36 investigative determination and shall provide notice to the alleged offender

1 that, if the allegation is determined to be true, the offender's name will be  
2 placed in the central registry.

3 (C) The other state may also conduct an investigation in  
4 this state that results in the offender's being named in a true report in  
5 that state and placed in the central registry of that state.

6  
7 SECTION 9. Arkansas Code § 12-12-509(a), regarding the investigation  
8 of reports of child maltreatment and the examination of children, is amended  
9 to read as follows:

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

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

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

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

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

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

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

28 (iv) Local law enforcement on allegations of severe  
29 maltreatment; and

30 (v) The prosecuting attorney on allegations of  
31 severe maltreatment.

32 (3)(A) The prosecuting attorney may provide written notice to  
33 the department that the department does not need to provide notification of  
34 the initial maltreatment report to the prosecuting attorney's office.

35 (B) Upon receiving the notification, the department shall  
36 not be required to provide notification of the initial maltreatment report to



1 the prosecuting attorney's office.

2  
3 SECTION 10. Arkansas Code § 12-12-509(d), regarding the investigation  
4 of reports of child maltreatment and the examination of children, is amended  
5 to read as follows:

6 (d)(1) An investigative determination shall be made in each  
7 investigation within thirty (30) days regardless of whether the investigation  
8 is conducted by the Department of Human Services, the ~~Family Protection Unit~~  
9 Crimes Against Children Division of the Department of Arkansas State Police,  
10 or local law enforcement.

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

14 (3) Investigations involving out-of-home offenders which are  
15 determined to be true may be extended up to thirty (30) additional days to  
16 allow the investigator to ascertain:

17 (A) The names and conditions of any minor children of the  
18 alleged offender; and

19 (B) Whether minor children of the alleged offender have  
20 been maltreated or are at risk of maltreatment; and

21 (C) To the extent practical, whether children previously  
22 or currently under the care of the alleged offender have been sexually abused  
23 or are at risk of sexual abuse.

24 (4) No investigations shall be transferred to inactive status  
25 because investigators are awaiting documentary evidence.

26  
27 SECTION 11. Arkansas Code § 12-12-510(a), regarding investigative  
28 powers for child maltreatment, is amended to read as follows:

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

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

35 (3) Failure to comply with this section may subject the school,  
36 facility, or institution to contempt sanctions and reimbursement of

1 attorney's fees.

2 (4) No parent may prohibit a child from contacting a school  
 3 counselor during the course of a child maltreatment investigation.

4  
 5 SECTION 12. Arkansas Code § 12-12-510(g), regarding investigative  
 6 powers for child maltreatment, is amended to read as follows:

7 (g) Upon request by the investigating agency, any school, day care  
 8 center, child care facility, residential facility, residential treatment  
 9 facility, or similar institution shall provide the investigator with:

10 (1) the The name, date of birth, social security number, and  
 11 last known address and phone number of any person identified as an alleged  
 12 offender if the alleged maltreatment occurred at that school, center, or  
 13 facility; and

14 (2) The name and address of any witnesses to the alleged  
 15 maltreatment if the maltreatment occurred at that school, center, or  
 16 facility.

17  
 18 SECTION 13. Arkansas Code § 12-12-512 is amended to read as follows:

19 12-12-512. Child maltreatment investigative determination - Notice of  
 20 finding - Amendment and appeal.

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

23 (1)(A)(i) Unsubstantiated.

24 (ii) This determination shall be entered when the  
 25 allegation is not supported by a preponderance of the evidence.

26 (B)(i) ~~There can be no disclosure of unsubstantiated~~  
 27 ~~reports except~~ Unsubstantiated reports shall be confidential and shall be  
 28 disclosed only to:

29 (a) The prosecutor;

30 (b) A subject of the report;

31 (c) A court if the information in the record  
 32 is necessary for a determination of an issue before the court;

33 (d) Individual federal and state senators and  
 34 representatives and their staff members, but no disclosure may be made to any  
 35 committee or legislative body;

36 (e) Law enforcement agencies; ~~and~~

1 (f) Any appropriate licensing or registering  
2 authority; and

3 (g) Adult protective services.

4 (ii) Any person or agency to whom disclosure is made  
5 shall not disclose to any other person reports or other information obtained  
6 pursuant to subdivision (a)(1)(B)(i) of this section; or

7 (2)(A)(i) True.

8 (ii) This determination shall be entered when the  
9 allegation is supported by a preponderance of the evidence.

10 (B)(i) A determination of true but exempted, which means  
11 that the offender's name shall not be placed in the Central Registry, shall  
12 ~~not~~ be entered if:

13 (a) A parent practicing his or her religious  
14 beliefs does not, for that reason alone, provide medical treatment for a  
15 child, but in lieu of treatment the child is being furnished with treatment  
16 by spiritual means alone, through prayer, in accordance with a recognized  
17 religious method of healing by an accredited practitioner; or

18 (b) The offender is an underaged juvenile  
19 aggressor.

20 (C)(i) Notwithstanding subdivision (a)(2)(A)(i) of this  
21 section, the department shall have the authority to pursue:

22 (a) Any legal remedies, including the  
23 authority to initiate legal proceedings in a court of competent jurisdiction;  
24 and

25 (b) Medical care or treatment for a child when  
26 such care or treatment is necessary to prevent or remedy serious harm to the  
27 child or to prevent the withholding of medically indicated treatment from a  
28 child with life-threatening conditions.

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

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

35 (c)(1)(A)(i) In every case in which a report is determined to be true,  
36 the department shall notify each subject of the report of the determination.

1 (ii) If the offender is a juvenile age ten (10) or  
2 older and is in foster care, the department shall notify the juvenile's  
3 public defender or counsel for the juvenile and the legal parents or legal  
4 guardians of the offender.

5 (iii) If the offender is a juvenile age (10) or  
6 older, the department shall notify the legal parents or legal guardians of  
7 the offender.

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

10 (C) Notification shall include the following:

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

13 (ii) A statement that the person named as the  
14 offender of the true report may request an administrative hearing;

15 (iii) A statement that the request must be made to  
16 the department within thirty (30) days of receipt of the ~~hand-delivery~~  
17 service or certified mailing of the notice of determination; and

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

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

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

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

30 (C)(i) The one-hundred-eighty-day limit shall not apply if  
31 there is an ongoing criminal or delinquency investigation or criminal or  
32 delinquency charges have or will be filed regarding the occurrence that is  
33 the subject of the child maltreatment report.

34 (ii) In those cases, the administrative hearing  
35 shall be stayed pending final disposition of the criminal or delinquency  
36 proceedings.

1 (iii) It shall be the duty of the petitioner to  
2 report the final disposition of the criminal or delinquency proceeding to the  
3 department.

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

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

10 (vi) If the criminal or delinquency proceedings have  
11 reached no final outcome within twelve (12) months of the filing of the  
12 administrative appeal, the administrative appeal will be deemed waived if the  
13 petitioner fails to provide a written statement of the status of the criminal  
14 or delinquency proceedings every sixty (60) days and a disposition report  
15 within thirty (30) days of the entry of a dispositive judgment or order.

16 (3) When the department conducts administrative appeal hearings,  
17 the chief counsel of the department is authorized to require the attendance  
18 of witnesses and the production of books, records, or other documents through  
19 the issuance of subpoenas when that testimony or information is necessary to  
20 adequately present the position of the department, the investigating  
21 protective services agency, or the alleged offender or adult subject of a  
22 report.

23 (4) If the petitioner prevails at the administrative hearing or  
24 circuit court hearing and the report is changed from true to unsubstantiated,  
25 upon request by the petitioner, the department shall tender a list of persons  
26 to whom a disclosure had previously been made that the report was true.

27 (d) Failure to obey the subpoena may be deemed a contempt, punishable  
28 accordingly.

29 (e) Administrative hearing decisions and all exhibits submitted at the  
30 hearing are confidential and may be used or disclosed only as provided in §  
31 12-12-506(a)(2)(A).

32 (f)(1) Certified copies of orders from a court of competent  
33 jurisdiction dealing with the same subject matter as issues concerned in the  
34 administrative hearing may be filed with and considered by the hearing  
35 officer as motions for summary judgment.

36 (2) A decision on any identical issue shall be rendered without

1 a hearing.

2  
 3 SECTION 14. Arkansas Code § 12-12-516, regarding the protective  
 4 custody of children, is amended to add an additional subsection to read as  
 5 follows:

6 (e)(1) If the Department of Human Services has exercised a seventy-  
 7 two-hour hold on a juvenile pursuant to § 9-27-313 or § 12-12-516, then no  
 8 court shall enter an order taking custody from the department without the  
 9 express and written consent of the department.

10 (2) The limitation in this subsection shall not apply to orders  
 11 issued pursuant to a dependency-neglect petition filed by the department or  
 12 writs of habeas corpus.

13  
 14 SECTION 15. Arkansas Code § 12-12-517 is amended to read as follows:  
 15 12-12-517. Liability.

16 (a) Any person or agency required to participate and acting in good  
 17 faith in making notification, the taking of photographs or ~~X-rays~~  
 18 radiological tests, or the removal of a child while exercising protective  
 19 services shall be immune to suit and to liability, both civil and criminal.

20 (b) All persons making notification not named in this section, if  
 21 acting in good faith, shall be immune from liability.

22 (c) Any publicly supported school, facility, or institution acting in  
 23 good faith pursuant to § 12-12-510(a)(1)(2) shall be immune from liability.

24  
 25 SECTION 16. Arkansas Code § 12-12-519, regarding the custody of  
 26 children and services to families, is amended to add an additional subsection  
 27 to read as follows:

28 (e)(1) All health care providers involved in the delivery or care of  
 29 infants shall contact the Department of Human Services regarding infants born  
 30 and identified as affected by illegal substance abuse or withdrawal symptoms.

31 (2)(A) All health care providers contacting the department shall  
 32 share all pertinent information including individually identifiable health  
 33 information on the infants and mothers.

34 (B) A health care provider that contacts the department  
 35 under this subdivision (e)(2) shall apply the minimum necessary standard to  
 36 the provider's disclosure of protected health information.

1           (3) The Department of Human Services shall accept calls and  
2 other communications from health care providers involved in the delivery or  
3 care of infants born and identified as affected by illegal substance abuse or  
4 withdrawal symptoms.

5           (4) The Department of Human Services shall:

6                   (A) Develop a plan of safe care for infants affected by  
7 prenatal exposure to illegal drugs;

8                   (B) Be authorized to receive all of the protected health  
9 information necessary to develop the plan of safe care from all medical  
10 providers and hospitals involved in the infant's care.

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