

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 369

5 By: Senator Madison
6 By: Representative Webb
7

For An Act To Be Entitled

8
9
10 AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND
11 FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO AMEND THE CHILD MALTREATMENT
15 ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 12-12-503(12), concerning child abuse and
21 neglect, is amended to read as follows:

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

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

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



1 primarily by the financial inability of the person legally responsible and no
2 services for relief have been offered;

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

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

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

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

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

21 (viii) Knowingly allowing inappropriate contact with
22 a person who is:

23 (a) Registered as a sexual offender;

24 (b) Convicted of a sexual crime involving a
25 child; or

26 (c) Convicted of a crime involving child
27 pornography.

28 (B)(i) "Neglect" shall also include the causing of a
29 newborn child to be born with:

30 (a) An illegal substance present in the
31 child's bodily fluids or bodily substances as a result of the pregnant
32 mother's knowingly using an illegal substance before the birth of the child;
33 or

34 (b) A health problem as a result of the
35 mother's use before birth of an illegal substance.

36 (ii) As used in this subdivision (12)(B), "illegal

1 substance" means a drug that is prohibited to be used or possessed without a
2 prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

3 (iii) A test of the child's bodily fluids or bodily
4 substances may be used as evidence to establish neglect under subdivision
5 (12)(B)(i)(a) of this section.

6 (iv) A test of the mother's or child's bodily fluids
7 or bodily substances may be used as evidence to establish neglect under this
8 subdivision (12)(B)(i)(b);

9
10 SECTION 2. Arkansas Code § 12-12-503(17), concerning child abuse and
11 neglect, is amended to read as follows:

12 (17) "Sexual abuse" means:

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

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

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

19 (iii) Indecent exposure; or

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

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

24 (i) Sexual intercourse, deviate sexual activity, or
25 sexual contact; or

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

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

30 (i) Sexual intercourse, deviate sexual activity, or
31 sexual contact; or

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

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

36 (i) Forcing or encouraging the watching of

1 pornography; ~~or~~

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

4 (iii) Forcing the listening to of a description of
5 sexual intercourse, deviate sexual activity, or sexual contact transmitted by
6 any method; or

7 (iv) An act of voyeurism as defined under § 5-16-
8 102; or

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

11 (i) Sexual intercourse, deviate sexual activity, or
12 sexual contact by forcible compulsion; or

13 (ii) Attempted sexual intercourse, deviate sexual
14 activity, or sexual contact by forcible compulsion;

15

16 SECTION 3. Arkansas Code § 12-12-504(a), concerning child abuse
17 penalties, is amended to read as follows:

18 12-12-504. Penalties.

19 (a)(1) Any person, or official, ~~or institution~~ negligently or
20 willfully failing to make notification when required by this subchapter shall
21 be guilty of a Class C misdemeanor.

22 (2) Any person, or official, ~~or institution~~ willfully making
23 false notification pursuant to this subchapter, knowing such allegations to
24 be false, shall be guilty of a Class A misdemeanor.

25 (3) Any person, or official, ~~or institution~~ willfully making
26 false notification pursuant to this subchapter, knowing such allegations to
27 be false, and who has been previously convicted of making willful false
28 allegations shall be guilty of a Class D felony.

29

30 SECTION 4. Arkansas Code § 12-12-505(e), concerning child abuse
31 investigation files, is amended to read as follows:

32 (e)(1) The department may charge:

33 (A) A reasonable fee not to exceed ten dollars (\$10.00)
34 for researching, copying, and mailing records of the investigative files of
35 child maltreatment cases; ~~and~~

36 (B) A reasonable fee for reproducing copies of tapes and

1 photographs, ~~and~~ and

2 (C) A reasonable extra fee for expedited responses.

3 (2) No fee may be charged to:

4 (A) A nonprofit or volunteer agency that requests searches
5 of the investigative files; or

6 (B) A person who is indigent.

7
8 SECTION 5. Arkansas Code § 12-12-506 is amended to read as follows:
9 12-12-506. Disclosure of central registry data.

10 (a)(1) A report made pursuant to this subchapter shall be confidential
11 and shall be used or disclosed only as provided in this section.

12 (2)(A) If the allegations are determined to be true in
13 accordance with § 12-12-512, disclosure including protected health
14 information is absolutely limited to:

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

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

22 (iii) Any person who is the subject of a true
23 report;

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

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

31 (vi) An audit or similar activity conducted in
32 connection with the administration of such a plan or program by any
33 governmental agency that may by law conduct the audit or activity;

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

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

3 (b) Prior written approval is granted by the
4 Director of the Department of Health and Human Services; and

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

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

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

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

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

22 (xi) Child fatality review panels as authorized by
23 the department;

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

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

32 (xiv) The current foster parents of a child who is a
33 subject of a report;

34 (xv)(a) Individual federal and state senators and
35 representatives in their official capacity and their staff members who agree
36 not to allow any redisclosure of information.

1 (b) However, no disclosure shall be made to
 2 any committee or legislative body of any information that identifies any
 3 recipient of services by name or address;

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

7 (xvii) The attorney ad litem of a child who is the
 8 subject of a report; ~~and~~

9 (xviii)(a) An Employer or volunteer agency for
 10 purposes of screening an employee, applicant, or volunteer who is or will be
 11 engaged in employment or activity with children, the elderly, the disabled,
 12 or the mentally ill upon submission of a signed, notarized release from the
 13 employee, applicant, or volunteer.

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

16 (1) That the employee, applicant, or
 17 volunteer has a founded report;

18 (2) The date the investigation was
 19 completed; and

20 (3) The type of founded report; and

21 (xix) The Division of Developmental Disabilities
 22 Services and the Division of Adult and Aging Services as to participants of
 23 the waiver program.

24 (B) A report of an investigative determination that is
 25 true shall be disclosed to the division, by written report only, for purposes
 26 of enforcement of licensing laws and regulations.

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

31 (c)(1) Any person or agency to whom disclosure is made shall not
 32 disclose to any other person a report or other information obtained pursuant
 33 to this section.

34 (2) However, a local educational agency or a school counselor
 35 shall forward all true reports of child maltreatment received from the
 36 department whenever a child transfers from one (1) local educational agency

1 to another and shall notify the department of the child's new school, and
2 address, if known.

3 (3) Any person disclosing information in violation of this
4 subsection shall be guilty of a Class C misdemeanor.

5 (d) A true report that has been administratively appealed pursuant to
6 this subchapter and that has been stayed because of criminal proceedings
7 shall ~~not~~ be disclosed with the notation that the offender has a pending
8 criminal proceeding and has appealed the agency investigative determination
9 ~~other than for administration of adoption, foster care, or children's~~
10 ~~protective services programs.~~

11 (e)(1) The department shall not release data that would identify the
12 person who made the report unless a court of competent jurisdiction orders
13 release of the information after the court has reviewed, in camera, the
14 record related to the report and has found it has reason to believe that the
15 reporter knowingly made a false report.

16 (2) However, the information shall be disclosed to the
17 prosecuting attorney or law enforcement officers on request.

18 (f) Within ten (10) days following an investigative determination, the
19 department shall provide ~~the person~~ a mandated reporter who made notification
20 with information ~~or agency making notification of suspected child~~
21 ~~maltreatment information~~ as to whether an investigation has been conducted
22 and whether services have been offered.

23 (g) The department may disclose the investigative determination of any
24 offender when the offender is engaged in child-related activities or
25 employment and the department has determined that children under the care of
26 the offender are at risk of maltreatment by the offender.

27 (h) Nothing in this subchapter shall be construed to prevent
28 subsequent disclosure by the subject of the report.

29 (i) Any record of a screened-out report of child maltreatment shall
30 not be disclosed except to the prosecuting attorney and an appropriate law
31 enforcement agency and may be used only within the department for purposes of
32 administration of the program.

33 (j)(1) Information on a pending investigation is confidential and may
34 be disclosed only as provided in this section.

35 (2) Information on a pending investigation shall be released
36 upon request to:

- 1 (A) The department;
- 2 (B) Law enforcement;
- 3 (C) The prosecuting attorney's office;
- 4 (D) A multidisciplinary team under § 12-12-502;
- 5 (E) Any licensing or registering authority, including a
6 school board, superintendent, or principal to the extent necessary to carry
7 out its official responsibilities, but the information shall be maintained as
8 confidential; and
- 9 (F)(i) Individual federal and state senators and
10 representatives and their staff members who agree not to allow any
11 redisclosure of information.
- 12 (ii) However, no disclosure may be made to any
13 committee or legislative body.
- 14 (3) Information on a pending investigation may be released to or
15 disclosed in a circuit court child custody case or similar case if:
- 16 (A) No seventy-two-hour hold has been exercised under this
17 subchapter, or pleadings filed pursuant to the Arkansas Juvenile Code of
18 1989, § 9-27-301 et seq.;
- 19 (B) Written notice of intent to request release or
20 disclosure is provided to the investigating agency at least five (5) days
21 before the date for release or disclosure;
- 22 (C) The investigating agency has the opportunity to appear
23 before the court and be heard on the issue of release or disclosure;
- 24 (D) The information gathered by the investigative agency
25 is necessary for the determination of an issue before the court;
- 26 (E) Waiting until completion of the investigation will
27 jeopardize the health or safety of the child in the custody case;
- 28 (F) A protective order is issued to prevent redisclosure
29 of the information provided by the investigating agency or the information is
30 released or disclosed only to the court in camera; and
- 31 (G) Release or disclosure of the information will not
32 compromise a criminal investigation.
- 33 (4)(A) Information on a pending investigation may be released to
34 or disclosed in the circuit court if the victim or offender has an open
35 dependency-neglect or family in need of services case before the circuit
36 court in the following circumstances:

1 (i) A petition for dependency-neglect has been filed
2 and the pending investigation is the basis in whole or part for the petition
3 for dependency-neglect;

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

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

11 (B) The circuit court shall order release or disclosure
12 only after:

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

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

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

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

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

28 (C) However, nothing in subdivision (j)(4)(B) of this
29 section limits discovery by a party if a petition for dependency-neglect has
30 been filed but not yet adjudicated.

31
32 SECTION 6. Arkansas Code § 12-12-507(f), concerning reports of
33 suspected child abuse, is amended to read as follows:

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

1 identify and locate the child or the family.

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

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

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

- 15 (A) Shaking a child age three (3) or younger;
- 16 (B) Striking a child age six (6) or younger on the face or
 17 on the head;
- 18 (C) Interfering with a child's breathing; or
- 19 (D) Pinching, biting, or striking a child in the genital
 20 area.

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

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

26 (5)(A) The child abuse hotline shall accept a report of physical
 27 abuse involving a bruise to a child even if at the time of the report the
 28 bruise is not visible if the bruising occurred:

- 29 (i) Within the past fourteen (14) days; and
- 30 (ii) As a result of physical abuse as described in
 31 subdivisions (f)(1)-(4) of this section.

32 (B) However, the report shall not be determined to be true
 33 unless the existence of the bruise is corroborated.

34 (6) The child abuse hotline shall accept a report of neglect as
 35 defined under § 12-12-503(12)(B) only if the reporter is one (1) of the
 36 following mandatory reporters and the reporter has reasonable cause to

1 suspect that a child has been subjected to neglect as defined under § 12-12-
2 503(12)(B):

- 3 (A) A licensed nurse;
- 4 (B) Any medical personnel who may be engaged in the
5 admission, examination, care, or treatment of persons;
- 6 (C) An osteopath;
- 7 (D) A physician;
- 8 (E) A resident intern; ~~or~~
- 9 (F) A surgeon; or
- 10 (G) A social worker in a hospital or clinic.

11 (7) The child abuse hotline shall accept a report of child
12 maltreatment naming an adult as the victim only if:

- 13 (A) The alleged offender is a caretaker of a child; and
- 14 (B) The person making the report is one (1) of the
15 following:

- 16 (i) The adult victim;
- 17 (ii) A law enforcement officer;
- 18 (iii) The adult victim's counselor or therapist; ~~or~~
- 19 (iv) The alleged offender's counselor or
20 therapist; or
- 21 (v) The alleged offender.

22 (8)(A) The child abuse hotline shall accept a report of neglect
23 if a child has contact with a person registered as a sexual offender,
24 convicted of a sex offense involving a child, or convicted of an offense
25 involving child pornography.

26 (B) The report shall not be determined true unless the
27 contact was inappropriate and knowingly allowed.

28
29 SECTION 7. Arkansas Code § 12-12-508 is amended to read as follows:
30 12-12-508. Radiology procedures, photographs, and medical records.

31 (a) Any person who is required to make notification under this
32 subchapter may take or cause to be taken radiology procedures and photographs
33 or compile medical records which may be probative as to the existence or
34 extent of child maltreatment.

35 (b) Hospitals and clinics may make videotapes which may be probative
36 as to the existence or extent of child maltreatment.

1 (c) The Department of Health and Human Services or law enforcement
 2 officials shall be provided a copy of ~~have access to~~ the results of radiology
 3 procedures, videotapes, photographs, or medical records upon request.

4 (d) The department and law enforcement officials shall be allowed
 5 access to the child's public and private school records during the course of
 6 the child maltreatment investigation.

7
 8 SECTION 8. Arkansas Code § 12-12-509 is amended to read as follows:
 9 12-12-509. Investigation - Examinations of children.

10 (a)(1) The Department of Health and Human Services shall cause an
 11 investigation to be made upon receiving initial notification of suspected
 12 child 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 investigation shall begin within twenty-four
 17 (24) hours if:

18 (i) The allegation is severe maltreatment, excluding
 19 an allegation of sexual abuse if the most recent allegation of sexual abuse
 20 was more than one (1) year ago and the alleged victim does not currently have
 21 contact with the alleged offender; or

22 (ii) The allegation is that a child has been
 23 subjected to neglect as defined in § 12-12-503(12)(B).

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

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

28 (ii) Attorney ad litem of any foster child named as
 29 the victim or offender;

30 (iii) Attorney ad litem of all other children in the
 31 same foster home if the maltreatment occurred in the foster home; and

32 (iv) ~~Local law enforcement on an allegation of~~
 33 ~~severe maltreatment; and~~

34 ~~(v)~~—The prosecuting attorney on an allegation of
 35 severe maltreatment.

36 (D) At the initial time of contact with the alleged

1 offender, the investigator shall advise the alleged offender of the
 2 allegations made against the alleged offender in a manner that is consistent
 3 with the laws protecting the rights of the person who made the report.

4 (E) Upon initiation of the investigation, the primary
 5 focus of the investigation shall be whether or not the alleged offender has
 6 access to the child and whether or not the child is at risk such that the
 7 child needs to be protected.

8 (3)(A) The prosecuting attorney may provide written notice to
 9 the Department of Health and Human Services that the Department of Health and
 10 Human Services does not need to provide notification of the initial
 11 maltreatment report to the prosecuting attorney's office.

12 (B) Upon receiving the notification, the Department of
 13 Health and Human Services shall not be required to provide notification of
 14 the initial maltreatment report to the prosecuting attorney's office.

15 (b)(1) If the alleged offender is a family member or lives in the home
 16 with the alleged victim, the investigation shall seek to ascertain:

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

19 (B) The existence and extent of previous injuries;

20 (C) The identity of the person responsible for the
 21 maltreatment;

22 (D) The names and conditions of other children in the
 23 home;

24 (E) The circumstances of the parents or caretakers of the
 25 child;

26 (F) The environment where the child resides;

27 (G) The relationship of the child or children with the
 28 parents or caretakers; and

29 (H) All other pertinent data.

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

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

34 (B) The identity of the person responsible for the
 35 maltreatment;

36 (C) The existence and extent of previous maltreatment

1 perpetrated by the alleged offender;

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

5 (E) If the report is determined to be true and is a report
6 of sexual intercourse, deviate sexual activity, or sexual contact, an
7 assessment of any other children previously or currently under the care of
8 the alleged offender, to the extent practical, and whether these children
9 have been maltreated or are at risk of maltreatment; and

10 (F) All other pertinent and relevant data.

11 (c)(1)(A) The investigation shall include interviews with the parents,
12 both custodial and noncustodial.

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

15 (C) The investigation shall include an interview with any
16 other relevant persons.

17 (2)(A) The investigation shall include an interview with the
18 child separate and apart from the alleged offender or any representative or
19 attorney for the alleged offender.

20 (B) However, if the age or abilities of the child render
21 an interview impossible, the investigation shall include observation of the
22 child.

23 (3) The investigation may include a physical examination, a drug
24 test, radiology procedures, photographs, and a psychological or psychiatric
25 examination of all children subject to the care, custody, or control of the
26 alleged offender.

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

31 (d)(1) An investigative determination shall be made in each
32 investigation within thirty (30) days regardless of whether the investigation
33 is conducted by the Department of Health and Human Services, the Crimes
34 Against Children Division of the Department of Arkansas State Police, or
35 local law enforcement.

36 (2) However, this procedural requirement shall not be considered

1 as a factor to alter the investigative determination in any judicial or
2 administrative proceeding.

3 (3) An investigation involving an out-of-home alleged offender
4 that is determined to be true may be extended up to thirty (30) additional
5 days to allow an investigator to ascertain:

6 (A) The names and conditions of any minor children of the
7 alleged offender;

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

10 (C) To the extent practicable, whether children previously
11 or currently under the care of the alleged offender have been sexually abused
12 or are at risk of sexual abuse.

13 (4) No investigation shall be transferred to inactive status
14 because an investigator is awaiting documentary evidence.

15
16 SECTION 9. Arkansas Code § 12-12-510, regarding investigative powers,
17 is amended to add an additional subsection to read as follows:

18 (h) The person conducting the investigation may obtain a criminal
19 background check, including a fingerprint-based check in any national crime
20 information database, on any subject of the report.

21
22 SECTION 10. Arkansas Code § 12-12-512(a), concerning child
23 maltreatment investigation notices, is amended to read as follows:

24 (a) Upon completion of the investigation, the Department of Health and
25 Human Services shall determine that the allegations of child maltreatment
26 are:

27 (1)(A)(i) Unsubstantiated.

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

30 (B)(i) An unsubstantiated report, including protected
31 health information, shall be confidential and shall be disclosed only to:

32 (a) The prosecutor;

33 (b) A subject of the report;

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

36 (d) Individual federal and state senators and

1 representatives and their staff members in their official capacities, but no
2 disclosure may be made to any committee or legislative body;

3 (e) Law enforcement agencies;

4 (f) Any appropriate licensing or registering
5 authority; ~~and~~

6 (g) Adult protective services; ~~and~~

7 (h) The Division of Developmental Disabilities
8 Services and the Division of Aging and Adult Services as to participants of
9 the waiver program.

10 (ii) Any person or agency to whom disclosure is made
11 shall not disclose to any other person a report or other information obtained
12 pursuant to subdivision (a)(1)(B)(i) of this section; or

13 (2)(A)(i) True.

14 (ii)(a) A true determination shall be entered when
15 the allegation is supported by a preponderance of the evidence.

16 (b) However, for any act or omission of
17 maltreatment which would be a criminal offense or an act of delinquency, any
18 defense or affirmative defense that would be applicable to the criminal
19 offense or delinquent act is also cognizable in a maltreatment proceeding.

20 (B)(i) A determination of true but exempted, which means
21 that the offender's name shall not be placed in the central registry, shall
22 be entered if:

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

28 (b) The offender is an underaged juvenile
29 aggressor.

30 (C)(i) Notwithstanding subdivision (a)(2)(A)(i) of this
31 section, the department may pursue:

32 (a) Any legal remedies, including the
33 authority to initiate legal proceedings in a court of competent jurisdiction;
34 and

35 (b) Medical care or treatment for a child when
36 such care or treatment is necessary to prevent or remedy serious harm to the

1 child or to prevent the withholding of medically indicated treatment from a
2 child with life-threatening conditions.

3 (ii) Except with respect to the withholding of
4 medically indicated treatments from a disabled infant with life-threatening
5 conditions, case-by-case determinations concerning the exercise of authority
6 in this subsection shall be within the sole discretion of the department.

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