

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

As Engrossed: S2/28/07

A Bill

SENATE BILL 369

5 By: Senator Madison
6 By: Representative Webb
7

For An Act To Be Entitled

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

Subtitle

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(b), concerning reports of*
33 *suspected child abuse, is amended to read as follows:*

34 (b) *When any of the following has reasonable cause to suspect that a*
35 *child has been subjected to child maltreatment or has died as a result of*
36 *child maltreatment or observes a child being subjected to conditions or*

1 *circumstances that would reasonably result in child maltreatment, he or she*
2 *shall immediately notify the child abuse hotline:*

- 3 (1) *Any child care worker or foster care worker;*
- 4 (2) *A coroner;*
- 5 (3) *A day care center worker;*
- 6 (4) *A dentist;*
- 7 (5) *A dental hygienist;*
- 8 (6) *A domestic abuse advocate;*
- 9 (7) *A domestic violence shelter employee;*
- 10 (8) *A domestic violence shelter volunteer;*
- 11 (9) *An employee of the Department of Health and Human Services;*
- 12 (10) *An employee working under contract for the Division of*
13 *Youth Services of the Department of Health and Human Services;*
- 14 (11) *Any foster parent;*
- 15 (12) *A judge;*
- 16 (13) *A law enforcement official;*
- 17 (14) *A licensed nurse;*
- 18 (15) *Any medical personnel who may be engaged in the admission,*
19 *examination, care, or treatment of persons;*
- 20 (16) *A mental health professional;*
- 21 (17) *An osteopath;*
- 22 (18) *A peace officer;*
- 23 (19) *A physician;*
- 24 (20) *A prosecuting attorney;*
- 25 (21) *A resident intern;*
- 26 (22) *A school counselor;*
- 27 (23) *A school ~~official~~ employee;*
- 28 (24) *A social worker;*
- 29 (25) *A surgeon;*
- 30 (26) *A teacher;*
- 31 (27) *A court-appointed special advocate program staff member or*
32 *volunteer;*
- 33 (28) *A juvenile intake or probation officer; ~~or~~*
- 34 (29) *Any clergyman, which includes a minister, priest, rabbi,*
35 *accredited Christian Science practitioner, or other similar functionary of a*
36 *religious organization, or an individual reasonably believed to be so by the*

1 person consulting him or her, except to the extent he or she:

2 (A) Has acquired knowledge of suspected maltreatment
3 through communications required to be kept confidential pursuant to the
4 religious discipline of the relevant denomination or faith; or

5 (B) Received the knowledge of the suspected maltreatment
6 from the offender in the context of a statement of admission; or

7 (30) An employee of a child advocacy center.

8
9 SECTION 7. Arkansas Code § 12-12-507(f), concerning reports of
10 suspected child abuse, is amended to read as follows:

11 (f)(1) The child abuse hotline shall accept a report when the
12 allegations, if true, would constitute child maltreatment as defined in § 12-
13 12-503 and so long as sufficient identifying information is provided to
14 identify and locate the child or the family.

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

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

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

22 (C) Shaking a child age four (4) or older; or

23 (D) Striking a child age seven (7) or older on the face or
24 on the head.

25 (3) 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:

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

29 (B) Striking a child age six (6) or younger on the face or
30 on the head;

31 (C) Interfering with a child's breathing; or

32 (D) Pinching, biting, or striking a child in the genital
33 area.

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

36 (B) The report shall be determined not to be true if the

1 injury is a minor temporary mark or causes transient pain and was an
2 acceptable restraint as provided in § 12-12-503(2)(C)(ii).

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

6 (i) Within the past fourteen (14) days; and

7 (ii) As a result of physical abuse as described in
8 subdivisions (f)(1)-(4) of this section.

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

11 (6) The child abuse hotline shall accept a report of neglect as
12 defined under § 12-12-503(12)(B) only if the reporter is one (1) of the
13 following mandatory reporters and the reporter has reasonable cause to
14 suspect that a child has been subjected to neglect as defined under § 12-12-
15 503(12)(B):

16 (A) A licensed nurse;

17 (B) Any medical personnel who may be engaged in the
18 admission, examination, care, or treatment of persons;

19 (C) An osteopath;

20 (D) A physician;

21 (E) A resident intern; ~~or~~

22 (F) A surgeon; or

23 (G) A social worker in a hospital.

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

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

27 (B) The person making the report is one (1) of the
28 following:

29 (i) The adult victim;

30 (ii) A law enforcement officer;

31 (iii) The adult victim's counselor or therapist; ~~or~~

32 (iv) The alleged offender's counselor or
33 therapist; or

34 (v) The alleged offender.

35 (8)(A) The child abuse hotline shall accept a report of neglect
36 if a child has contact with a person registered as a sexual offender,

1 convicted of a sex offense involving a child, or convicted of an offense
2 involving child pornography.

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

5
6 SECTION 8. Arkansas Code § 12-12-508 is amended to read as follows:

7 12-12-508. Radiology procedures, photographs, and medical records.

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

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

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

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

20
21 SECTION 9. Arkansas Code § 12-12-509 is amended to read as follows:

22 12-12-509. Investigation - Examinations of children.

23 (a)(1) The Department of Health and Human Services shall cause an
24 investigation to be made upon receiving initial notification of suspected
25 child maltreatment.

26 (2)(A) All investigations shall begin within seventy-two (72)
27 hours.

28 (B) However, ~~if the notice contains an allegation of~~
29 ~~severe maltreatment, then~~ the investigation shall begin within twenty-four
30 (24) hours if:

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

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

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

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

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

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

9 (iv) ~~Local law enforcement on an allegation of~~
10 ~~severe maltreatment; and~~

11 ~~(v) The prosecuting attorney on an allegation of~~
12 ~~severe maltreatment.~~

13 (D) At the initial time of contact with the alleged
14 offender, the investigator shall advise the alleged offender of the
15 allegations made against the alleged offender in a manner that is consistent
16 with the laws protecting the rights of the person who made the report.

17 (E) Upon initiation of the investigation, the primary
18 focus of the investigation shall be whether or not the alleged offender has
19 access to children and whether or not children are at risk such that children
20 need to be protected.

21 (3)(A) The prosecuting attorney may provide written notice to
22 the Department of Health and Human Services that the Department of Health and
23 Human Services does not need to provide notification of the initial
24 maltreatment report to the prosecuting attorney's office.

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

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

30 (A) The existence, cause, nature, and extent of the child
31 maltreatment;

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

33 (C) The identity of the person responsible for the
34 maltreatment;

35 (D) The names and conditions of other children in the
36 home;

1 (E) The circumstances of the parents or caretakers of the
2 child;

3 (F) The environment where the child resides;

4 (G) The relationship of the child or children with the
5 parents or caretakers; and

6 (H) All other pertinent data.

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

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

11 (B) The identity of the person responsible for the
12 maltreatment;

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

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

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

23 (F) All other pertinent and relevant data.

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

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

28 (C) The investigation shall include an interview with any
29 other relevant persons.

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

33 (B) However, if the age or abilities of the child render
34 an interview impossible, the investigation shall include observation of the
35 child.

36 (3) The investigation may include a physical examination, a drug

1 test, radiology procedures, photographs, and a psychological or psychiatric
2 examination of all children subject to the care, custody, or control of the
3 alleged offender.

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

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

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

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

19 (A) The names and conditions of any minor children of the
20 alleged offender;

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

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

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

28
29 SECTION 10. Arkansas Code § 12-12-510, regarding investigative powers,
30 is amended to add an additional subsection to read as follows:

31 (h) The person conducting the investigation shall have the right to
32 obtain a criminal background check, including a fingerprint-based check in
33 any national crime information database, on any subject of the report.
34

35 SECTION 11. Arkansas Code § 12-12-512 is amended to read as follows:
36 12-12-512. Child maltreatment investigative determination - Notice of

1 *finding - Amendment and appeal.*

2 (a) Upon completion of the investigation, the Department of Health and
3 Human Services shall determine that the allegations of child maltreatment
4 are:

5 (1)(A)(i) Unsubstantiated.

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

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

10 (a) The prosecutor;

11 (b) A subject of the report;

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

14 (d) Individual federal and state senators and
15 representatives and their staff members in their official capacities, but no
16 disclosure may be made to any committee or legislative body;

17 (e) Law enforcement agencies;

18 (f) Any appropriate licensing or registering
19 authority; ~~and~~

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

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

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

27 (2)(A)(i) True.

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

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

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

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

6 (b) The offender is an underaged juvenile
7 aggressor.

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

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

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

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

21 (b) *If the investigation cannot be completed, the investigation shall*
22 *be determined incomplete and placed in inactive status.*

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

25 (ii) *If the offender is a juvenile ten (10) years of*
26 *age or older and is in foster care, the department shall notify the*
27 *juvenile's public defender or counsel for the juvenile and the legal parents*
28 *or legal guardians of the offender.*

29 (iii) *If the offender is a juvenile ten (10) years*
30 *of age or older, the department shall notify the legal parents or legal*
31 *guardians of the offender.*

32 (B) *Notification shall be in writing by certified mail,*
33 *restricted delivery, or by a process server.*

34 (C) *Notification to an offender who was an adult at the*
35 *time of the act or omission that resulted in the finding of child*
36 *maltreatment shall include the following:*

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

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

6 (iii) A statement that the request
7 must be made to the department within thirty (30) days of receipt of the
8 service or certified mailing of the notice of determination;

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

12 (v) A statement that the administrative
13 hearing may take place in person if requested by the petitioner or the
14 petitioner's attorney within thirty (30) days from the date that the
15 petitioner receives notification under this subsection (c), provided that the
16 hearing officer may conduct the hearing by video teleconference in lieu of an
17 in-person hearing. If neither party requests that the hearing be conducted in
18 person, then the hearing shall be conducted telephonically.

19 (D) Notification to an offender who was a
20 juvenile age ten (10) years of age or older at the time of the act or
21 omission that resulted in the finding of child maltreatment shall include the
22 following:

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

26 (ii) A statement that the matter
27 has been referred for an automatic administrative hearing that may only be
28 waived by the juvenile offender or his parent in writing; and

29 (iii) The name of the person
30 making the notification to the juvenile offender, the person's occupation,
31 and where he or she can be reached.

32 (2) The administrative hearing process must be completed within
33 one hundred eighty (180) days from the date of the receipt of the request for
34 a hearing, or the petitioner's name shall be removed from the central
35 registry, provided that:

36 (A) Delays in completing the hearing that are

1 attributable to the petitioner shall not count against the one-hundred-
2 eighty-day limit; and

3 (B)(i) The one-hundred-eighty-day limit shall
4 not apply if there is an ongoing criminal or delinquency investigation or
5 criminal or delinquency charges have or will be filed regarding the
6 occurrence that is the subject of the child maltreatment report.

7 (ii) In those cases, the
8 administrative hearing shall be stayed pending final disposition of the
9 criminal or delinquency proceedings.

10 (iii) It shall be the duty of the
11 petitioner to report the final disposition of the criminal or delinquency
12 proceeding to the department.

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

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

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

26 (3) When the department conducts administrative appeal hearings,
27 the chief counsel of the department may require the attendance of witnesses
28 and the production of books, records, or other documents through the issuance
29 of subpoenas when that testimony or information is necessary to adequately
30 present the position of the department, the investigating protective services
31 agency, or the alleged offender or adult subject of a report.

32 (4) Upon request by a petitioner, if the petitioner prevails at
33 an administrative hearing or circuit court hearing and a report is changed
34 from true to unsubstantiated, the department shall tender a list of persons
35 to whom a disclosure had previously been made that the report was true.

36 (5)(A) If a petitioner's name is removed from the central

1 registry as a result of a failure to comply with this subsection (c), then
2 the department shall report any failures to comply with this subsection (c)
3 for each quarter to the House Interim Committee on Aging, Children and Youth,
4 Legislative and Military Affairs and the Senate Interim Committee on Children
5 and Youth.

6 (B) The quarterly report to the House Interim
7 Committee on Aging, Children and Youth, Legislative and Military Affairs and
8 the Senate Interim Committee on Children and Youth shall include a written
9 explanation of the failure of the department.

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

12 (e) Administrative hearing decisions and all exhibits submitted at the
13 hearing are confidential and may be used or disclosed only as provided in §
14 12-12-506(a)(2)(A).

15 (f)(1) The Office of Appeals and Hearings of the Department of Health
16 and Human Services shall designate the sites to be used for video
17 teleconference hearings.

18 (2) The office shall designate sites within ten (10) miles
19 of the following cities:

20 (A) Arkadelphia;

21 (B) Booneville;

22 (C) Conway;

23 (D) Fayetteville;

24 (E) Jonesboro;

25 (F) Little Rock; or

26 (G) Warren.

27 (3) The office may designate additional sites for video
28 teleconference hearings.

29 (g)(1) If any party requests an in-person hearing within thirty (30)
30 days from the date that the party receives notification under subsection (c)
31 of this section, then the in-person hearing shall be conducted in an office
32 of the department nearest to the petitioner's residence unless the hearing
33 officer notifies the parties that the hearing will be conducted via video
34 teleconference.

35 (2) A site for a video teleconference hearing shall
36 include the location designated by the office that is nearest to the

1 petitioner's residence.

2 (3) The hearing officer and other parties may agree to
3 appear at the location designated by the office or at any other designated
4 hearing locations that are convenient to them.

5 (h)(1) A certified copy of a judgment or an adjudication from a court
6 of competent jurisdiction dealing with the same subject matter as an issue
7 concerned in the administrative hearing may be filed with and considered by
8 the hearing officer in a motion for summary judgment.

9 (2)(A) A decision on any identical issue shall be rendered
10 without a hearing.

11 (B) However, if the judgment or adjudication
12 of the court is reversed or vacated and notice of the reversal or vacation is
13 provided to the department, the department shall set the matter for a
14 hearing.

15
16 SECTION 12. Arkansas Code § 12-12-516(a), regarding the protective
17 custody of children, is amended to read as follows:

18 (a)(1) A police officer, a law enforcement official, a juvenile
19 division of circuit court judge during juvenile proceedings concerning the
20 child or a sibling of the child, or a designated employee of the Department
21 of Health and Human Services may take a child into protective custody or any
22 person in charge of a hospital or similar institution or any physician
23 treating a child may keep that child in his or her custody without the
24 consent of the parent or the guardian, whether or not additional medical
25 treatment is required, if the:

26 (A) Child is ~~dependent neglected as defined in § 9-27-~~
27 303(17) subjected to neglect as defined under § 12-12-503(12)(B) and the
28 department assesses the family and determines that the newborn and any other
29 children, including siblings, under the custody or care of the mother are at
30 substantial risk of serious harm such that the children need to be removed
31 from the custody or care of the mother;

32 (B) Child is dependent as defined in the Arkansas Juvenile
33 Code of 1989, § 9-27-301 et seq.; or

34 (C) Circumstances or conditions of the child are such that
35 continuing in his or her place of residence or in the care and custody of the
36 parent, guardian, custodian, or caretaker presents an immediate danger of

1 *severe maltreatment.*

2 *(2) However, such custody shall not exceed seventy-two (72)*
3 *hours except in the event that the expiration of seventy-two (72) hours falls*
4 *on a weekend or holiday, in which case protective custody may be extended*
5 *through the next business day following the weekend or holiday.*

6

7

/s/ Madison

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36