

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 S3/15/07

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(17), concerning child abuse and
21 neglect, is amended to read as follows:

22 (17) "Sexual abuse" means:

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

25 (i) Sexual intercourse, deviate sexual activity, or
26 sexual contact by forcible compulsion;

27 (ii) Attempted sexual intercourse, deviate sexual
28 activity, or sexual contact by forcible compulsion;

29 (iii) Indecent exposure; or

30 (iv) Forcing the watching of pornography or live
31 sexual activity;

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

34 (i) Sexual intercourse, deviate sexual activity, or
35 sexual contact; or

36 (ii) Attempted sexual intercourse, deviate sexual



1 activity, or sexual contact;

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

4 (i) Sexual intercourse, deviate sexual activity, or
5 sexual contact; or

6 (ii) Attempted sexual intercourse, deviate sexual
7 activity, or sexual contact;

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

10 (i) Forcing or encouraging the watching of
11 pornography; ~~or~~

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

14 (iii) Forcing listening to a phone sex line; or

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

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

19 (i) Sexual intercourse, deviate sexual activity, or
20 sexual contact by forcible compulsion; or

21 (ii) Attempted sexual intercourse, deviate sexual
22 activity, or sexual contact by forcible compulsion;

23

24 SECTION 2. Arkansas Code § 12-12-504(a), concerning child abuse
25 penalties, is amended to read as follows:

26 12-12-504. Penalties.

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

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

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

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SECTION 3. Arkansas Code § 12-12-506 is amended to read as follows:
12-12-506. Disclosure of central registry data.

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

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

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

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

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

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

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

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

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

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

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

(c) The child, through his or her parent, 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 Health and Human Services and the
7 child care facility owner or operator who requested the registry information
8 through a signed notarized release from an individual who is a volunteer or
9 who has applied for employment or who is currently employed by a child care
10 facility 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)(a) Individual federal and state senators and
29 representatives in their official capacity and their staff members who agree
30 not to allow any redisclosure of information.

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

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

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

3 (xviii)(a) An Employer or volunteer agency for
4 purposes of screening an employee, applicant, or volunteer who is or will be
5 engaged in employment or activity with children, the elderly, the disabled,
6 or the mentally ill upon submission of a signed, notarized release from the
7 employee, applicant, or volunteer.

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

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

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

14 (3) The type of founded report; and

15 (xix) The Division of Developmental Disabilities
16 Services and the Division of Adult and Aging Services as to participants of
17 the waiver program.

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

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

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

28 (2) However, a local educational agency or a school counselor
29 shall forward all true reports of child maltreatment received from the
30 department whenever a child transfers from one (1) local educational agency
31 to another and shall notify the department of the child's new school, and
32 address, if known.

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

35 (d) A true report that has been administratively appealed pursuant to
36 this subchapter and that has been stayed because of criminal proceedings

1 shall not be disclosed other than for administration of adoption, foster
2 care, or children's protective services programs.

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

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

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

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

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

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

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

27 (2) Information on a pending investigation shall be released
28 upon request to:

29 (A) The department;

30 (B) Law enforcement;

31 (C) The prosecuting attorney's office;

32 (D) A multidisciplinary team under § 12-12-502;

33 (E) Any licensing or registering authority, including a
34 school board, superintendent, or principal to the extent necessary to carry
35 out its official responsibilities, but the information shall be maintained as
36 confidential; and

1 (F)(i) Individual federal and state senators and
2 representatives and their staff members who agree not to allow any
3 redisclosure of information.

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

6 (3) Information on a pending investigation may be released to or
7 disclosed in a circuit court child custody case or similar case if:

8 (A) No seventy-two-hour hold has been exercised under this
9 subchapter, or pleadings filed pursuant to the Arkansas Juvenile Code of
10 1989, § 9-27-301 et seq.;

11 (B) Written notice of intent to request release or
12 disclosure is provided to the investigating agency at least five (5) days
13 before the date for release or disclosure;

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

16 (D) The information gathered by the investigative agency
17 is necessary for the determination of an issue before the court;

18 (E) Waiting until completion of the investigation will
19 jeopardize the health or safety of the child in the custody case;

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

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

25 (4)(A) Information on a pending investigation may be released to
26 or disclosed in the circuit court if the victim or offender has an open
27 dependency-neglect or family in need of services case before the circuit
28 court in the following circumstances:

29 (i) A petition for dependency-neglect has been filed
30 and the pending investigation is the basis in whole or part for the petition
31 for dependency-neglect;

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

35 (iii) Written notice of intent to request release or
36 disclosure is provided by a party to all other parties in the matter and to

1 the investigating agency at least five (5) days before the date for release
2 or disclosure.

3 (B) The circuit court shall order release or disclosure
4 only after:

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

8 (ii) Determining that the information gathered thus
9 far by the investigative agency is necessary for the determination of an
10 issue before the court;

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

14 (iv) Entering a protective order to prevent
15 redisclosure of the information provided by the investigative agency or
16 limiting the release or disclosure of the information to only the court in
17 camera; and

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

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

23

24 *SECTION 4. Arkansas Code § 12-12-507(b), concerning reports of*
25 *suspected child abuse, is amended to read as follows:*

26 (b) *When any of the following has reasonable cause to suspect that a*
27 *child has been subjected to child maltreatment or has died as a result of*
28 *child maltreatment or observes a child being subjected to conditions or*
29 *circumstances that would reasonably result in child maltreatment, he or she*
30 *shall immediately notify the child abuse hotline:*

31 (1) *Any child care worker or foster care worker;*

32 (2) *A coroner;*

33 (3) *A day care center worker;*

34 (4) *A dentist;*

35 (5) *A dental hygienist;*

36 (6) *A domestic abuse advocate;*

- 1 (7) A domestic violence shelter employee;
- 2 (8) A domestic violence shelter volunteer;
- 3 (9) An employee of the Department of Health and Human Services;
- 4 (10) An employee working under contract for the Division of
- 5 Youth Services of the Department of Health and Human Services;
- 6 (11) Any foster parent;
- 7 (12) A judge;
- 8 (13) A law enforcement official;
- 9 (14) A licensed nurse;
- 10 (15) Any medical personnel who may be engaged in the admission,
- 11 examination, care, or treatment of persons;
- 12 (16) A mental health professional;
- 13 (17) An osteopath;
- 14 (18) A peace officer;
- 15 (19) A physician;
- 16 (20) A prosecuting attorney;
- 17 (21) A resident intern;
- 18 (22) A school counselor;
- 19 (23) A school official;
- 20 (24) A social worker;
- 21 (25) A surgeon;
- 22 (26) A teacher;
- 23 (27) A court-appointed special advocate program staff member or
- 24 volunteer;
- 25 (28) A juvenile intake or probation officer; ~~or~~
- 26 (29) Any clergyman, which includes a minister, priest, rabbi,
- 27 accredited Christian Science practitioner, or other similar functionary of a
- 28 religious organization, or an individual reasonably believed to be so by the
- 29 person consulting him or her, except to the extent he or she:
- 30 (A) Has acquired knowledge of suspected maltreatment
- 31 through communications required to be kept confidential pursuant to the
- 32 religious discipline of the relevant denomination or faith; or
- 33 (B) Received the knowledge of the suspected maltreatment
- 34 from the offender in the context of a statement of admission; or
- 35 (30) An employee of a child advocacy center.
- 36

1 SECTION 5. Arkansas Code § 12-12-507(f), concerning reports of
2 suspected child abuse, is amended to read as follows:

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

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

11 (A) Throwing, kicking, burning, biting, or cutting a
12 child;

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

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

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

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

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

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

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

24 (D) Pinching, biting, or striking a child in the genital
25 area.

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

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

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

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

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

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

3 (6) The child abuse hotline shall accept a report of neglect as
4 defined under § 12-12-503(12)(B) only if the reporter is one (1) of the
5 following mandatory reporters and the reporter has reasonable cause to
6 suspect that a child has been subjected to neglect as defined under § 12-12-
7 503(12)(B):

8 (A) A licensed nurse;

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

11 (C) An osteopath;

12 (D) A physician;

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

14 (F) A surgeon; or

15 (G) A social worker in a hospital.

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

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

19 (B) The person making the report is one (1) of the
20 following:

21 (i) The adult victim;

22 (ii) A law enforcement officer;

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

24 (iv) The alleged offender's counselor or
25 therapist; or

26 (v) The alleged offender.

27
28 SECTION 6. Arkansas Code § 12-12-508 is amended to read as follows:

29 12-12-508. Radiology procedures, photographs, and medical records.

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

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

36 (c) The Department of Health and Human Services or law enforcement

1 officials shall be provided a copy of ~~have access to~~ the results of radiology
2 procedures, videotapes, photographs, or medical records upon request.

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

6
7 SECTION 7. Arkansas Code § 12-12-509 is amended to read as follows:
8 12-12-509. Investigation - Examinations of children.

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

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

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

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

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

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

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

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

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

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

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

35 (D) At the initial time of contact with the alleged
36 offender, the investigator shall advise the alleged offender of the

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

3 (E) Upon initiation of the investigation, the primary
4 focus of the investigation shall be whether or not the alleged offender has
5 access to children and whether or not children are at risk such that children
6 need to be protected.

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

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

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

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

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

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

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

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

25 (F) The environment where the child resides;

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

28 (H) All other pertinent data.

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

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

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

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

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

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

9 (F) All other pertinent and relevant data.

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

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

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

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

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

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

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

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

35 (2) However, this procedural requirement shall not be considered
36 as a factor to alter the investigative determination in any judicial or

1 administrative proceeding.

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

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

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

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

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

14

15 SECTION 8. Arkansas Code § 12-12-510, regarding investigative powers,
16 is amended to add an additional subsection to read as follows:

17 (h)(1) The person conducting the investigation shall have the right to
18 obtain a criminal background check, including a fingerprint-based check in
19 any national crime information database, on any subject of the report.

20 (2) The results of the criminal background check shall not be
21 disclosed outside of the department except as permitted under § 12-12-506.

22

23 SECTION 9. Arkansas Code § 12-12-512 is amended to read as follows:

24 *12-12-512. Child maltreatment investigative determination - Notice of*
25 *finding - Amendment and appeal.*

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

29 (1)(A)(i) Unsubstantiated.

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

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

34 (a) The prosecutor;

35 (b) A subject of the report;

36 (c) A court if the information in the record

1 is necessary for a determination of an issue before the court;

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

5 (e) Law enforcement agencies;

6 (f) Any appropriate licensing or registering
7 authority; ~~and~~

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

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

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

15 (2)(A)(i) True.

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

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

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

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

30 (b) The offender is an underaged juvenile
31 aggressor.

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

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

1 (b) Medical care or treatment for a child when
2 such care or treatment is necessary to prevent or remedy serious harm to the
3 child or to prevent the withholding of medically indicated treatment from a
4 child with life-threatening conditions.

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

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

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

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

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

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

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

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

27 (ii) *A statement that the person*
28 *named as the offender of the true report may request an administrative*
29 *hearing and the potential consequences to the person as a result of the*
30 *person's name being placed on the central registry;*

31 (iii) *A statement that the request*
32 *must be made to the department within thirty (30) days of receipt of the*
33 *service or certified mailing of the notice of determination;*

34 (iv) *The name of the person making*
35 *notification, the person's occupation, and where he or she can be reached;*
36 *and*

1 (v) A statement that the administrative
2 hearing may take place in person if requested by the petitioner or the
3 petitioner's attorney within thirty (30) days from the date that the
4 petitioner receives notification under this subsection (c), provided that the
5 hearing officer may conduct the hearing by video teleconference in lieu of an
6 in-person hearing. If neither party requests that the hearing be conducted in
7 person, then the hearing shall be conducted telephonically.

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

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

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

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

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

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

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

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

35 (iii) It shall be the duty of the
36 petitioner to report the final disposition of the criminal or delinquency

1 proceeding to the department.

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

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

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

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

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

25 (5)(A) If a petitioner's name is removed from the central
26 registry as a result of a failure to comply with this subsection (c), then
27 the department shall report any failures to comply with this subsection (c)
28 for each quarter to the House Interim Committee on Aging, Children and Youth,
29 Legislative and Military Affairs and the Senate Interim Committee on Children
30 and Youth.

31 (B) The quarterly report to the House Interim
32 Committee on Aging, Children and Youth, Legislative and Military Affairs and
33 the Senate Interim Committee on Children and Youth shall include a written
34 explanation of the failure of the department.

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

1 (e) Administrative hearing decisions and all exhibits submitted at the
2 hearing are confidential and may be used or disclosed only as provided in §
3 12-12-506(a)(2)(A).

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

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

9 (A) Arkadelphia;

10 (B) Booneville;

11 (C) Conway;

12 (D) Fayetteville;

13 (E) Jonesboro;

14 (F) Little Rock; or

15 (G) Warren.

16 (3) The office may designate additional sites for video
17 teleconference hearings.

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

24 (2) A site for a video teleconference hearing shall
25 include the location designated by the office that is nearest to the
26 petitioner's residence.

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

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

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

36 (B) However, if the judgment or adjudication

1 of the court is reversed or vacated and notice of the reversal or vacation is
2 provided to the department, the department shall set the matter for a
3 hearing.

4
5 SECTION 10. Arkansas Code § 12-12-516(a), regarding the protective
6 custody of children, is amended to read as follows:

7 (a)(1) A police officer, a law enforcement official, a juvenile
8 division of circuit court judge during juvenile proceedings concerning the
9 child or a sibling of the child, or a designated employee of the Department
10 of Health and Human Services may take a child into protective custody or any
11 person in charge of a hospital or similar institution or any physician
12 treating a child may keep that child in his or her custody without the
13 consent of the parent or the guardian, whether or not additional medical
14 treatment is required, if the:

15 (A) Child is ~~dependent-neglected as defined in § 9-27-~~
16 303(17) subjected to neglect as defined under § 12-12-503(12)(B) and the
17 department assesses the family and determines that the newborn and any other
18 children, including siblings, under the custody or care of the mother are at
19 substantial risk of serious harm such that the children need to be removed
20 from the custody or care of the mother;

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

23 (C) Circumstances or conditions of the child are such that
24 continuing in his or her place of residence or in the care and custody of the
25 parent, guardian, custodian, or caretaker presents an immediate danger of
26 severe maltreatment.

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

31
32 /s/ Madison
33
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35
36