

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/19/09
A Bill

SENATE BILL 464

5 By: Senators Madison, J. Key
6 By: Representative Harrelson
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO HELP TO ENSURE THE HEALTH, SAFETY, AND
11 WELFARE OF CHILDREN BY MODERNIZING AND UPDATING
12 THE LAW RELATED TO CHILD ABUSE AND NEGLECT; TO
13 ADOPT THE CHILD MALTREATMENT ACT; TO REPEAL THE
14 ARKANSAS CHILD MALTREATMENT ACT; AND FOR OTHER
15 PURPOSES.
16

17 **Subtitle**

18 TO HELP TO ENSURE THE HEALTH, SAFETY,
19 AND WELFARE OF CHILDREN BY MODERNIZING
20 AND UPDATING THE LAW RELATED TO CHILD
21 ABUSE AND NEGLECT.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 12, Chapter 18, is amended to add an
27 additional subchapter to read as follows:

28 CHAPTER 18

29 CHILD MALTREATMENT ACT

30 Subchapter 1.

31 General Provisions.
32

33 12-18-101. Title.

34 This chapter shall be known and may be cited as the "Child Maltreatment
35 Act".
36



1 12-18-102. Purpose.

2 The purpose of this chapter is to:

3 (1) Provide a system for the reporting of known or suspected
4 child maltreatment;

5 (2) Ensure the immediate screening, safety assessment, and
6 prompt investigation of reports of known or suspected child maltreatment;

7 (3) Ensure that immediate steps are taken to:

8 (A) Protect a maltreated child and any other child under
9 the same care who may also be in danger of maltreatment; and

10 (B) Place a child who is in immediate danger of severe
11 maltreatment in a safe environment;

12 (4) Provide immunity from criminal prosecution for an individual
13 making a good faith report of suspected child maltreatment;

14 (5) Preserve the confidentiality of all records in order to
15 protect the rights of the child and of the child's parents or guardians;

16 (6) Encourage the cooperation of state law enforcement
17 officials, courts, and state agencies in the investigation, assessment,
18 prosecution, and treatment of child maltreatment; and

19 (7) Stabilize the home environment if a child's health and
20 safety are not at risk.

21
22 12-18-103. Definitions.

23 As used in this chapter:

24 (1) "Abandonment" means the failure of a parent to:

25 (A) Provide reasonable support and to maintain regular
26 contact with a child through statement or contact when the failure is
27 accompanied by an intention on the part of the parent to permit the condition
28 to continue for an indefinite period in the future and support or maintain
29 regular contact with a child without just cause; or

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

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

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

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

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

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

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

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

16 (v) Any nonaccidental physical injury;

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

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

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

22 (c) Shaking a child; or

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

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

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

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

30 (c) Interfering with a child's breathing;

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

33 (e) Tying a child to a fixed or heavy object
34 or binding or tying a child's limbs together;

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

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

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

7 (1) Marijuana;

8 (2) Alcohol, excluding alcohol given to
9 a child during a recognized and established religious ceremony or service;

10 (3) A narcotic; or

11 (4) An over-the-counter drug if a person
12 purposely administers an overdose to a child or purposely gives an
13 inappropriate over-the-counter drug to a child and the child is detrimentally
14 impacted by the overdose or the over-the-counter drug;

15 (h) Exposing a child to a chemical that has
16 the capacity to interfere with normal physiological functions, including, but
17 not limited to, a chemical used or generated during the manufacture of
18 methamphetamine; or

19 (i) Subjecting a child to Munchausen's
20 syndrome by proxy or a factitious illness by proxy if the incident is
21 confirmed by medical personnel.

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

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

26 (C)(i) "Abuse" shall not include physical discipline of a
27 child when it is reasonable and moderate and is inflicted by a parent or
28 guardian for purposes of restraining or correcting the child.

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

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

35 (b) The agency has policy and procedures
36 regarding restraints;

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

3 (d) The child is in danger or hurting himself
4 or herself or others;

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

8 (f) The restraint is for a reasonable period
9 of time; and

10 (g) The restraint is in conformity with
11 training and agency policy and procedures.

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

16 (iv) The age, size, and condition of the child and
17 the location of the injury and the frequency or recurrence of injuries shall
18 be considered when determining whether the physical discipline is reasonable
19 or moderate;

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

26 (4)(A) "Central intake", otherwise referred to as the "Child
27 Abuse Hotline", means a unit that shall be established by the Department of
28 Human Services for the purpose of receiving and recording notification made
29 pursuant to this chapter.

30 (B) The Child Abuse Hotline shall be staffed twenty-four
31 (24) hours per day and shall have statewide accessibility through a toll-free
32 telephone number;

33 (5) "Child" or "juvenile" means an individual who is from birth
34 to eighteen (18) years of age;

35 (6) "Child maltreatment" means abuse, sexual abuse, neglect,
36 sexual exploitation, or abandonment;

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

2 (8) "Deviate sexual activity" means any act of sexual
3 gratification involving:

4 (A) Penetration, however slight, of the anus or mouth of
5 one person by the penis of another person; or

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

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

12 (ii) If the act was committed against the will of
13 the child, then forcible compulsion has been used.

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

19 (10) "Guardian" means any person, agency, or institution, as
20 defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so
21 appointed;

22 (11) "Indecent exposure" means the exposure by a person of the
23 person's sexual organs for the purpose of arousing or gratifying the sexual
24 desire of the person or of any other person under circumstances in which the
25 person knows the conduct is likely to cause affront or alarm;

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

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

35 (i) Failure or refusal to prevent the abuse of the
36 child when the person knows or has reasonable cause to know the child is or

1 has been abused;

2 (ii) Failure or refusal to provide necessary food,
3 clothing, shelter, and education required by law, excluding the failure to
4 follow an individualized educational program, or medical treatment necessary
5 for the child's well-being, except when the failure or refusal is caused
6 primarily by the financial inability of the person legally responsible and no
7 services for relief have been offered;

8 (iii) Failure to take reasonable action to protect
9 the child from abandonment, abuse, sexual abuse, sexual exploitation,
10 neglect, or parental unfitness when the existence of the condition was known
11 or should have been known;

12 (iv) Failure or irremediable inability to provide
13 for the essential and necessary physical, mental, or emotional needs of the
14 child, including the failure to provide a shelter that does not pose a risk
15 to the health or safety of the child;

16 (v) Failure to provide for the child's care and
17 maintenance, proper or necessary support, or medical, surgical, or other
18 necessary care;

19 (vi) Failure, although able, to assume
20 responsibility for the care and custody of the child or to participate in a
21 plan to assume such responsibility; or

22 (vii) Failure to appropriately supervise the child
23 that results in the child's being left alone at an inappropriate age or in
24 inappropriate circumstances creating a dangerous situation or a situation
25 that puts the child at risk of harm.

26 (B)(i) "Neglect" shall also include:

27 (a) Causing a child to be born with an illegal
28 substance present in the child's bodily fluids or bodily substances as a
29 result of the pregnant mother's knowingly using an illegal substance before
30 the birth of the child; or

31 (b) At the time of the birth of a child, the
32 presence of an illegal substance in the mother's bodily fluids or bodily
33 substances as a result of the pregnant mother's knowingly using an illegal
34 substance before the birth of the child.

35 (ii) As used in this subdivision (12)(B), "illegal
36 substance" means a drug that is prohibited to be used or possessed without a

1 prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

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

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

8 (14) "Parent" means a biological mother, an adoptive parent, or
9 a man to whom the biological mother was married at the time of conception or
10 birth or who has been found by a court of competent jurisdiction to be the
11 biological father of the child;

12 (15) "Pornography" means:

13 (A) Pictures, movies, or videos that lack serious
14 literary, artistic, political, or scientific value and that, when taken as a
15 whole and applying contemporary community standards, would appear to the
16 average person to appeal to the prurient interest;

17 (B) Material that depicts sexual conduct in a patently
18 offensive manner lacking serious literary, artistic, political, or scientific
19 value; or

20 (C) Obscene or licentious material;

21 (16) "Serious bodily injury" means bodily injury that involves
22 substantial risk of death, extreme physical pain, protracted and obvious
23 disfigurement, or protracted loss or impairment of the function of a bodily
24 member, organ, or mental faculty;

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

31 (18) "Sexual abuse" means:

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

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

36 (ii) Attempted sexual intercourse, deviate sexual

1 activity, or sexual contact by forcible compulsion;

2 (iii) Indecent exposure; or

3 (iv) Forcing the watching of pornography or live
4 sexual activity;

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

7 (i) Sexual intercourse, deviate sexual activity, or
8 sexual contact; or

9 (ii) Attempted sexual intercourse, deviate sexual
10 activity, or sexual contact;

11 (C) By a caretaker to a person younger than eighteen (18)
12 years of age:

13 (i) Sexual intercourse, deviate sexual activity, or
14 sexual contact; or

15 (ii) Attempted sexual intercourse, deviate sexual
16 activity, or sexual contact;

17 (iii) Forcing or encouraging the watching of
18 pornography;

19 (iv) Forcing, permitting, or encouraging the
20 watching of live sexual activity;

21 (v) Forcing the listening to a phone sex line; or

22 (vi) An act of voyeurism; or

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

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

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

29 (19)(A)(i) "Sexual contact" means any act of sexual gratification
30 involving:

31 (a) The touching, directly or through
32 clothing, of the sex organs, buttocks, or anus of a person or the breast of a
33 female;

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

36 (c) The offender requesting to touch a child

1 in a sexual manner.

2 (ii) Evidence of sexual gratification may be
3 inferred from the attendant circumstances surrounding the specific complaint
4 of child maltreatment.

5 (B) However, nothing in this section shall permit normal
6 affectionate hugging to be construed as sexual contact;

7 (20) "Sexual exploitation" means:

8 (A) Allowing, permitting, or encouraging participation or
9 depiction of the child in:

10 (i) Prostitution;

11 (ii) Obscene photography;

12 (iii) Obscene filming; or

13 (B) Obscenely depicting, obscenely posing, or obscenely
14 posturing a child for any use or purpose;

15 (21) "Subject of the report" means:

16 (A) The offender;

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

19 (C) The child who is the subject of suspected
20 maltreatment; and

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

24 (23) "Voyeurism" means looking, for the purpose of sexual
25 arousal or gratification, into a private location or place in which a child
26 may reasonably be expected to be nude or partially nude.

27
28 12-18-104. Confidentiality.

29 Any data, records, reports, or documents that are created, collected,
30 or compiled by or on behalf of the Department of Human Services, the
31 Department of Arkansas State Police, or other entity authorized under this
32 chapter to perform investigations or provide services to children,
33 individuals, or families shall not be subject to disclosure under the Freedom
34 of Information Act of 1967, § 25-19-101 et seq.

1 12-18-105. Rules.

2 The Director of the Department of Human Services shall promulgate rules
3 to implement this chapter.

4
5 12-18-106. Cooperative agreements.

6 (a) The Director of the Department of Human Services shall implement a
7 coordinated multidisciplinary team approach to intervention in reports
8 involving severe maltreatment and all reports requested by a prosecuting
9 attorney pertaining to a law enforcement or prosecuting attorney's
10 investigation by initiating formal cooperative agreements with:

11 (1) Law enforcement agencies;

12 (2) Prosecuting attorneys; and

13 (3) Other appropriate agencies and individuals.

14 (b) The director may enter into cooperative agreements with other
15 states to create a national child maltreatment registration system.

16
17 12-18-107. Liability.

18 (a) A person or agency required by this chapter to report suspected
19 child maltreatment who acts in good faith in making notification, the taking
20 of a photograph or radiological test, or the removal of a child while
21 exercising a seventy-two hour hold is immune to suit and to civil and
22 criminal liability.

23 (b) If acting in good faith, a person making notification not named in
24 this section is immune from liability.

25 (c) A publicly supported school, facility, or institution acting in
26 good faith by cooperating with the investigative agency under this chapter
27 shall be immune from civil and criminal liability.

28
29 Subchapter 2

30 Offenses and Penalties.

31
32 12-18-201. Failure to notify by a mandated reporter in the first
33 degree.

34 (a) A person commits the offense of failure to notify by a mandated
35 reporter in the first degree if he or she:

36 (1) Is a mandated reporter under this chapter;

1 (2) Has:

2 (A) Reasonable cause to suspect that a child has been
3 subjected to child maltreatment;

4 (B) Reasonable cause to suspect that a child has died as a
5 result of child maltreatment; or

6 (C) Observes a child being subjected to conditions or
7 circumstances that would reasonably result in child maltreatment; and

8 (3) Knowingly fails to notify the Child Abuse Hotline of the
9 child maltreatment or suspected child maltreatment.

10 (b) Failure to notify by a mandated reporter in the first degree is a
11 Class A misdemeanor.

12
13 12-18-202. Failure to notify by a mandated reporter in the second
14 degree.

15 (a) A person commits the offense of failure to notify by a mandated
16 reporter in the second degree if he or she:

17 (1) Is mandated reporter under this chapter;

18 (2) Has:

19 (A) Reasonable cause to suspect that a child has been
20 subjected to child maltreatment;

21 (B) Reasonable cause to suspect that a child has died as a
22 result of child maltreatment; or

23 (C) Observes a child being subjected to conditions or
24 circumstances that would reasonably result in child maltreatment; and

25 (3) Recklessly fails to notify the Child Abuse Hotline of the
26 child maltreatment or suspected child maltreatment.

27 (b) Failure to notify by a mandated reporter in the second degree is a
28 Class C misdemeanor.

29
30 12-18-203. Making a false report under this chapter.

31 (a) A person commits the offense of making a false report under this
32 chapter if he or she purposely makes a report containing a false allegation
33 to the Child Abuse Hotline knowing the allegation to be false.

34 (b)(1) A first offense of making a false report under this chapter is
35 a Class A misdemeanor.

36 (2) A subsequent offense of making a false report under this

1 chapter is a Class D felony.

2
3 12-18-204. Unlawful restriction of child abuse reporting.

4 (a)(1) A person employed at a school, Head Start program, or day care
5 facility commits the offense of unlawful restriction of a child abuse
6 reporting if he or she:

7 (A) Prohibits a mandated reporter under this chapter from
8 making a report of child maltreatment or suspected child maltreatment to the
9 Child Abuse Hotline; or

10 (B) Requires that a mandated reporter under this chapter
11 receive permission from the person before the mandated reporter makes a
12 report of child maltreatment or suspected child maltreatment to the Child
13 Abuse Hotline; or

14 (C) Knowingly retaliates against a mandated reporter under
15 this chapter for reporting child maltreatment or suspected child maltreatment
16 to the Child Abuse Hotline.

17 (2) Nothing in this section shall prohibit any person or
18 institution from requiring a mandatory reporter employed or serving as a
19 volunteer for a person or institution to inform a representative of that
20 person or institution that the reporter has made a report to the Child Abuse
21 Hotline.

22 (b) Unlawful restriction of child abuse reporting is a Class A
23 misdemeanor.

24
25 12-18-205. Unlawful disclosure of data or information under this
26 chapter.

27 (a) A person commits the offense of unlawful disclosure of data or
28 information under this chapter if the person knowingly discloses data or
29 information to a person to whom disclosure is not permitted by this chapter.

30 (b) Unlawful disclosure of data or information under this chapter is a
31 Class A misdemeanor.

32
33 12-18-206. Civil liability for failure to report.

34 A person required by this chapter to make a report of child
35 maltreatment or suspected child maltreatment to the Child Abuse Hotline who
36 purposely fails to do so is civilly liable for damages proximately caused by

1 that failure.

2
3 12-18-207. Judicial and prosecutorial disclosure.

4 A judge or prosecuting attorney who fails to make a report when
5 required by this chapter is immune from criminal and civil liability under
6 this chapter.

7
8 12-18-208. Subsequent disclosure by a subject of a report.

9 This chapter does not prevent subsequent disclosure by a subject of the
10 report.

11
12 12-18-209. Unlawful disclosure of data or information.

13 The Department of Human Services or a prosecuting attorney may file a
14 petition in the appropriate court seeking imposition of penalties for
15 violation of this chapter.

16
17 Subchapter 3.

18 Child Abuse Hotline.

19
20 12-18-301. Creation.

21 (a) There is created the Child Abuse Hotline.

22 (b) The Child Abuse Hotline is a unit established within the
23 Department of Human Services or its designee with the purpose of receiving
24 and recording notifications and reports under this chapter.

25 (c)(1) The Child Abuse Hotline shall be staffed twenty-four (24) hours
26 per day and shall have statewide accessibility through a toll-free telephone
27 number.

28 (2) The toll-free telephone number under this section shall be
29 known as the "Child Abuse Hotline".

30 (d) All persons whether a mandated reporter under this chapter or not
31 may use the Child Abuse Hotline to report child maltreatment or suspected
32 child maltreatment.

33
34 12-18-302. Mandated reporters.

35 (a) As prescribed under this section, a mandated reporter under this
36 chapter may report child maltreatment or suspected child maltreatment by

1 telephone call, facsimile transmission, or online reporting.

2 (b) Facsimile transmission and online reporting may be used in
3 nonemergency situations by an identified mandated reporter under this chapter
4 who provides the following contact information:

5 (1) Name and phone number; and

6 (2) In the case of online reporting, the email address of the
7 identified mandated reporter under this chapter.

8 (c) The Child Abuse Hotline shall provide confirmation of the receipt
9 of a facsimile transmission via a return facsimile transmission or via online
10 receipt.

11 (d) A mandated reporter under this chapter who wishes to remain
12 anonymous shall make a report through the Child Abuse Hotline toll-free
13 telephone system.

14
15 12-18-303. Minimum requirements for a report to be accepted.

16 (a) Except as otherwise provided in this section, the Child Abuse
17 Hotline shall accept a report of child maltreatment or suspected child
18 maltreatment if:

19 (1) The allegations, if true, would constitute child
20 maltreatment as defined under this chapter;

21 (2) Sufficient identifying information is provided to identify
22 and locate the child or the child's family; and

23 (3) The child or the child's family is present in Arkansas or
24 the incident occurred in Arkansas.

25 (b) If the alleged offender resides in another state and the incident
26 occurred in another state or country, the Child Abuse Hotline shall screen
27 out the report, transfer the report to the Child Abuse Hotline of the state
28 or country where the alleged offender resides or the incident occurred, and,
29 if child protection is an issue, forward the screened out report to the
30 Department of Human Services.

31 (c) If the incident occurred in Arkansas and the victim, offender, or
32 victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall
33 accept the report and the Arkansas investigating agency shall contact the
34 other state and request assistance in completing the investigation, including
35 an interview with the out-of-state subject of the report.

36 (d)(1) If the Child Abuse Hotline receives a report and the alleged

1 offender is a resident of the State of Arkansas and the report of child
2 maltreatment or suspected child maltreatment in the state or country in which
3 the act occurred would also be child maltreatment in Arkansas at the time the
4 incident occurred, the Child Abuse Hotline shall refer the report to the
5 appropriate investigating agency within the state so that the Arkansas
6 investigative agency can investigate, alone or in concert with, the
7 investigative agency of any other state or country that may be involved.

8 (2) The Arkansas investigating agency shall make an
9 investigative determination and shall provide notice to the alleged offender
10 that, if the allegation is determined to be true, the offender's name will be
11 placed in the Child Maltreatment Central Registry.

12 (3) The other state may also conduct an investigation in this
13 state that results in the offender's being named in a true report in that
14 state and placed in the Child Maltreatment Central Registry of that state.

15
16 12-18-304. Qualifying reports of certain types of physical abuse.

17 (a)(1) The Child Abuse Hotline shall accept a report of physical abuse
18 if any of the following intentional or knowing acts are alleged to occur:

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 four (4) years of age or older; or

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

25 (2) A report under this subsection shall not be determined to be
26 true unless the child suffered an injury as the result of the act.

27 (b) The Child Abuse Hotline shall accept a report of physical abuse if
28 any of the following intentional or knowing acts are alleged to occur:

29 (1) Shaking a child three (3) years of age or younger;

30 (2) Striking a child six (6) years of age or younger on the face
31 or on the head;

32 (3) Interfering with a child's breathing; or

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

34 (c)(1) The Child Abuse Hotline shall accept a report of physical abuse
35 if a child suffers an injury as the result of a restraint.

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

1 is a minor temporary mark or causes transient pain and was an acceptable
2 restraint as provided under this chapter.

3 (d)(1) The Child Abuse Hotline shall accept a report of physical abuse
4 involving a bruise to a child even if at the time of the report the bruise is
5 not visible if the bruising occurred:

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

7 (B) As a result of physical abuse as described under
8 subsections (a)-(c) of this section.

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

11
12 12-18-305. Garrett's Law reports.

13 The Child Abuse Hotline shall accept a report of neglect as defined
14 under § 12-18-103(13)(B) only if the reporter is one (1) of the following
15 mandated reporters and the mandated reporter has reasonable cause to suspect
16 that a child has been subjected to neglect as defined under § 12-18-
17 103(13)(B):

18 (1) A licensed nurse;

19 (2) Any medical personnel who may be engaged in the admission,
20 examination, care, or treatment of persons;

21 (3) An osteopath;

22 (4) A physician;

23 (5) A resident intern;

24 (6) A surgeon; or

25 (7) A social worker in a hospital.

26
27 12-18-306. Reports naming an adult as the victim.

28 The Child Abuse Hotline shall accept a report of sexual abuse, sexual
29 contact, or sexual exploitation naming an adult as the victim only if:

30 (1) The alleged offender is a caretaker of a child; and

31 (2) The person making the report is one (1) of the following:

32 (A) The adult victim;

33 (B) A law enforcement officer;

34 (C) The adult victim's counselor or therapist;

35 (D) The alleged offender's counselor or therapist; or

36 (E) The alleged offender.

1
2 12-18-307. Reports alleging Munchausen’s syndrome by proxy or
3 factitious illness.

4 The Child Abuse Hotline shall accept a report of child maltreatment
5 alleging Munchausen’s syndrome by proxy or factitious illness only if the
6 reporter is a medical professional.

7 12-18-308. Reports of injury to a child’s intellectual, emotional, or
8 psychological development.

9 The child maltreatment hotline shall accept a report of injury to a
10 child’s intellectual, emotional, or psychological development as evidenced by
11 observable and substantial impairment of the child’s ability to function
12 within the child’s normal range of performance and behavior only if the
13 reporter is:

- 14 (1) A medical or mental health professional;
- 15 (2) A teacher; or
- 16 (3) A day care center worker.

17
18 12-18-309. Reports alleging that a child is dependent-neglected.

19 The Child Abuse Hotline shall accept telephone calls or other
20 communications alleging that a child is dependent-neglected, as defined in §
21 9-27-303(17), and shall immediately refer this information to the Department
22 of Human Services.

23
24 Subchapter 4

25 Reporting Suspected Child Maltreatment.

26
27 12-18-401. Generally.

28 A person may immediately notify the Child Abuse Hotline if he or she:

- 29 (1) Has reasonable cause to suspect that:
 - 30 (A) Child maltreatment has occurred; or
 - 31 (B) A child has died as a result of child maltreatment;

32 or

33 (2) Observes a child being subjected to conditions or
34 circumstances that would reasonably result in child maltreatment.

35
36 12-18-402. Mandated reporters.

1 (a) An individual listed as a mandated reporter under subsection (b)
2 of this section shall immediately notify the Child Abuse Hotline if he or
3 she:

4 (1) Has reasonable cause to suspect that a child has:

5 (A) Been subjected to child maltreatment; or

6 (B) Died as a result of child maltreatment; or

7 (2) Observes a child being subjected to conditions or
8 circumstances that would reasonably result in child maltreatment.

9 (b) The following individuals are mandated reporters under this
10 chapter:

11 (1) A child care worker or foster care worker;

12 (2) A coroner;

13 (3) A day care center worker;

14 (4) A dentist;

15 (5) A dental hygienist;

16 (6) A domestic abuse advocate;

17 (7) A domestic violence shelter employee;

18 (8) A domestic violence shelter volunteer;

19 (9) An employee of the Department of Human Services;

20 (10) An employee working under contract for the Division of
21 Youth Services of the Department of Human Services;

22 (11) A foster parent;

23 (12) A judge;

24 (13) A law enforcement official;

25 (14) A licensed nurse;

26 (15) Medical personnel who may be engaged in the admission,
27 examination, care, or treatment of persons;

28 (16) A mental health professional;

29 (17) An osteopath;

30 (18) A peace officer;

31 (19) A physician;

32 (20) A prosecuting attorney;

33 (21) A resident intern;

34 (22) A school counselor;

35 (23) A school official;

36 (24) A social worker;

1 be disclosed only as provided in this chapter.

2
3 12-18-502. Release and disclosure of data generally.

4 (a)(1) The Department of Human Services shall not release data that
5 would identify the person who made the report to the Child Abuse Hotline
6 unless a court of competent jurisdiction orders release of the information
7 after the court has reviewed in camera the record related to the report and
8 has found it has reason to believe that the reporter knowingly made a false
9 report.

10 (2) However, upon request, the information shall be disclosed to
11 the prosecuting attorney or law enforcement.

12 (b)(1) A person or agency to whom disclosure is made shall not
13 disclose to any other person a report or other information obtained pursuant
14 to this section.

15 (2) However, the person or agency is permitted to consult his or
16 her own attorney regarding the information in any notice provided by the
17 department.

18
19 12-18-503. Notification generally.

20 (a) The Department of Human Services shall notify the following of any
21 report of child maltreatment within five (5) business days:

22 (1) The legal parents, legal guardians, and current foster
23 parent of a child in foster care who is named as a victim or alleged
24 offender;

25 (2) The attorney ad litem for any child named as the victim or
26 alleged offender;

27 (3) A person appointed by the court as the Court Appointed
28 Special Advocate volunteer for any child named as the victim or alleged
29 offender;

30 (4) Counsel in a dependency-neglect case or family in need of
31 services case when the child named as a victim or alleged offender;

32 (5) The attorney ad litem and Court Appointed Special Advocate
33 volunteer for all other children in the same foster home if the child
34 maltreatment occurred in a foster home;

35 (6) The attorney ad litem and Court Appointed Special Advocate
36 for any child in foster care when the alleged juvenile offender or underaged

1 juvenile aggressor is placed in the same placement as the attorney ad litem
2 or Court Appointed Special Advocates' client; and

3 (7) The appropriate multi-disciplinary team.

4
5 12-18-504. Notification in cases of reports of severe maltreatment.

6 (a) The Department of Human Services shall immediately notify local
7 law enforcement of all reports of severe maltreatment.

8 (b)(1) Notification of a report of child maltreatment shall be provided
9 within five (5) business days to the prosecuting attorney on an allegation of
10 severe maltreatment.

11 (2) The prosecuting attorney may provide written notice to the
12 department that the department does not need to provide notification of the
13 initial child maltreatment report to the prosecuting attorney's office.

14 (3) Upon receiving the notification, the department shall not be
15 required to provide notification of the initial child maltreatment report to
16 the prosecuting attorney's office.

17
18 12-18-505. Notification to the child's school.

19 The Department of Human Services shall notify the child's school if the
20 department takes a seventy-two hour hold on the child or if the court awards
21 the department custody of the child.

22
23 12-18-506. Notice when the alleged offender works with children or is
24 engaged in child-related activities.

25 (a) If the Child Abuse Hotline receives a report naming as an alleged
26 offender a person who is engaged in child-related activities or employment
27 and the Department of Human Services has determined that children under the
28 care of the alleged offender appear to be at risk of maltreatment by the
29 alleged offender, the department may notify the following of the report made
30 to the Child Abuse Hotline:

31 (1) The alleged offender's employer;

32 (2) The school superintendent, principal, or a person in an
33 equivalent position where the alleged offender is employed;

34 (3) The person in charge of a paid or volunteer activity; and

35 (4) The appropriate licensing or registering authority to the
36 extent necessary to carry out its official responsibilities.

1 and any other appropriate law enforcement agency if the allegation involves
2 severe maltreatment.

3 (c) Upon referral, the Department of Arkansas State Police shall
4 investigate the allegations.

5 (d)(1) The Department of Human Services may develop and implement
6 triage procedures for screening out reports of child maltreatment of a child
7 not at risk of imminent harm if an appropriate referral is made to a
8 community organization or voluntary preventive service.

9 (2) The Department of Human Services shall not implement this
10 section until rules necessary to carry out this subsection have been
11 promulgated pursuant to the Administrative Procedures Act, § 25-15-201 et
12 seq.

13
14 12-18-602. Initiation of the investigation.

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

18 (b)(1) All investigations shall begin within seventy-two (72) hours.

19 (2) However, the investigation shall begin within twenty-four
20 (24) hours if:

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

25 (B) The allegation is that a child has been subjected to
26 neglect as defined in § 12-18-103(13)(B).

27 (c) At the initial time of contact with the alleged offender, the
28 person conducting the investigation shall advise the alleged offender of the
29 allegations made against the alleged offender in a manner that is consistent
30 with the laws protecting the rights of the person who made the report.

31 (d) Upon initiation of the investigation, the primary focus of the
32 investigation shall be whether or not the alleged offender has access to
33 children and whether or not children are at risk such that children need to
34 be protected.

35
36 12-18-603. Accompaniment by law enforcement.

1 Upon request, law enforcement shall accompany a person conducting an
2 investigation required by this chapter.

3
4 12-18-604. Services during the investigation.

5 The Department of Human Services shall have the authority to make
6 referrals or provide services during the course of the child maltreatment
7 investigation.

8
9 12-18-605. Investigation procedure generally.

10 (a) An investigation of child maltreatment or suspected child
11 maltreatment under this chapter shall include interviews with:

12 (1) The child as provided under subsection (b) of this section;

13 (2) The parents, both custodial and noncustodial;

14 (3) If neither parent is the alleged offender, the alleged
15 offender; and

16 (4) Any other relevant persons.

17 (b) If, after exercising reasonable diligence in conducting any or all
18 interviews, the subjects of the interviews cannot be located or are unable to
19 communicate, the efforts to conduct the interviews shall be documented and
20 the investigation shall proceed under this chapter.

21
22 12-18-606. When the alleged offender is a family member or lives in
23 the home with the alleged victim.

24 If the alleged offender is a family member or lives in the home with
25 the alleged victim, an investigation under this chapter shall seek to
26 ascertain:

27 (1) The existence, cause, nature, and extent of the child
28 maltreatment;

29 (2) The existence and extent of previous injuries;

30 (3) The identity of the person responsible for the child
31 maltreatment;

32 (4) The names and conditions of other children in the home;

33 (5) The circumstances of the parents or caretakers of the child;

34 (6) The environment where the child resides;

35 (7) The relationship of the child or children with the parents
36 or caretakers; and

1 (8) All other pertinent data.

2
3 12-18-607. When the alleged offender is not a family member or not
4 living in the home with the alleged victim.

5 If the alleged offender is not a family member nor living in the home
6 with the alleged victim, the investigation under this chapter shall seek to
7 ascertain:

8 (1) The existence, cause, nature, and extent of child
9 maltreatment;

10 (2) The identity of the person responsible for the child
11 maltreatment;

12 (3) The existence and extent of previous child maltreatment
13 perpetrated by the alleged offender;

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

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

22 (6) All other pertinent and relevant data.

23
24 12-18-608. Interview of the alleged child victim.

25 (a) A person conducting an investigation of a child victim under this
26 chapter shall have the discretion:

27 (1) In the child's best interest to limit the persons allowed to
28 be present when a child is being interviewed concerning allegations of child
29 maltreatment; and

30 (2) As it relates to the integrity of the investigation to limit
31 persons present during an interview.

32 (b)(1) The interview with the child victim shall be conducted separate
33 and apart from the alleged offender or any representative or attorney for the
34 alleged offender.

35 (2) However, if the age or abilities of the child victim render
36 an interview impossible, the investigation shall include observation of the

1 child.

2
3 12-18-609. Right to enter for the purposes of the investigation.

4 (a) A person conducting an investigation under this chapter shall have
5 the right to enter into or upon a home, school, or any other place for the
6 purpose of conducting the investigation and interviewing or completing the
7 investigation.

8 (b)(1) A publicly supported school, facility, or institution shall not
9 deny access to any person conducting a child maltreatment investigation under
10 this chapter.

11 (2) Failure to comply with this section may subject the publicly
12 supported school, facility, or institution to a contempt sanction and
13 reimbursement of attorney's fees.

14 (c)(1) If necessary access or admission is denied to a person
15 conducting an investigation under this chapter, the Department of Human
16 Services may petition the proper juvenile division of circuit court for an ex
17 parte order of investigation requiring the parent, caretaker, or persons
18 denying access to any place where the child may be to allow entrance for the
19 interviews, examinations, and investigations.

20 (2) However, upon application to the court by the parents,
21 caretaker, or persons denying access to the child showing good cause, the
22 court may issue a written order to stay the order of investigation pending a
23 hearing to be held within seventy-two (72) hours.

24
25 12-18-610. Access to the child's school records.

26 A person conducting an investigation under this chapter shall be
27 allowed access to the child's public and private school records during the
28 course of the child maltreatment investigation.

29
30 12-18-611. Inspection of personnel and volunteer records.

31 A person conducting an investigation required by this chapter shall
32 have the right to inspect personnel records of employees and volunteers in
33 any place where an allegation of child maltreatment has been reported as
34 having occurred at that place but the alleged offender is unknown.

35
36 12-18-612. Criminal background check.

1 (a) The person conducting an investigation under this chapter shall
2 have the right to obtain a criminal background check, including a
3 fingerprint-based check in any national crime information database, on any
4 subject of the report.

5 (b) The results of the criminal background check shall not be
6 disclosed outside of the Department of Human Services except as permitted
7 under this chapter.

8
9 12-18-613. Access to miscellaneous records.

10 Upon request by a person conducting an investigation under this
11 chapter, a school, day care center, child care facility, residential
12 facility, residential treatment facility, or similar institution shall
13 provide the person conducting the investigation with:

14 (1) The name, date of birth, social security number, and last
15 known address and phone number of any person identified as an alleged
16 offender if the alleged child maltreatment occurred at that school, center,
17 or facility; and

18 (2) The name and address of any witness to the alleged child
19 maltreatment if the alleged child maltreatment occurred at that school,
20 center, or facility.

21
22 12-18-614. Submission to a physical exam or other testing.

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

27
28 12-18-615. Radiology procedures, photographs, and medical records.

29 (a) A person who is required to make a report under this chapter may
30 take or cause to be taken radiology procedures and photographs or compile
31 medical records that may be relevant as to the existence or extent of child
32 maltreatment.

33 (b) A hospital or clinic may make videotapes that may be relevant as
34 to the existence or extent of child maltreatment.

35 (c) The Department of Human Services or law enforcement officials
36 shall be provided at no cost a copy of the results of radiology procedures,

1 videotapes, photographs, or medical records upon request.

2
3 12-18-616. Timing.

4 (a)(1) Except as otherwise provided in this section, an investigative
5 determination shall be made in each investigation under this chapter within
6 thirty (30) days regardless of whether the investigation is conducted by the
7 Department of Human Services, the Crimes Against Children Division of the
8 Department of Arkansas State Police, or local law enforcement.

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

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

15 (1) The names and conditions of any children of the alleged
16 offender;

17 (2) Whether children of the alleged offender have been
18 maltreated or are at risk of maltreatment; and

19 (3) To the extent practicable, whether children previously or
20 currently under the care of the alleged offender have been sexually abused or
21 are at risk of sexual abuse.

22 (c) An investigation shall not be transferred to inactive status
23 because an investigator is awaiting documentary evidence.

24
25 12-18-617. Authority to pursue other remedies.

26 (a) Notwithstanding an investigative determination finding of true but
27 exempted the Department of Human Services may pursue:

28 (1) Any legal remedies, including the authority to initiate
29 legal proceedings in a court of competent jurisdiction; and

30 (2) Medical care or treatment for a child when such care or
31 treatment is necessary to prevent or remedy serious harm to the child or to
32 prevent the withholding of medically indicated treatment from a child with
33 life-threatening conditions.

34 (b) Except with respect to the withholding of medically indicated
35 treatments from a disabled infant with life-threatening conditions, case-by-
36 case determinations concerning the exercise of authority in this section

1 shall be within the sole discretion of the department.

2
3 12-18-618. Religious bias prohibited.

4 The Department of Human Services shall investigate all allegations of
5 child maltreatment without regard to the parent's practice of his or her
6 religious beliefs and shall only consider whether the acts or omissions of
7 the parent constitute child maltreatment under this chapter.

8
9 12-18-619. Closing investigations.

10 (a) If at any time before or during an investigation under this
11 chapter it is determined that the alleged offender is not a caretaker of any
12 child and the alleged victim has reached eighteen (18) years of age prior to
13 notification, the child maltreatment investigation shall be closed
14 notwithstanding any criminal investigation.

15 (b)(1) If at any time before or during the investigation it appears
16 that the alleged offender is identified and is not a caretaker of the victim
17 child, excluding investigations of sexual abuse, the Department of Human
18 Services shall:

19 (A) Refer the matter to the appropriate law enforcement
20 agency;

21 (B) Close its investigation; and

22 (C) Forward a copy of its findings to the appropriate law
23 enforcement agency for the agency's further use in any criminal
24 investigation.

25 (2)(A) If the appropriate law enforcement agency subsequently
26 determines that the alleged offender is a caretaker, it shall immediately
27 notify the department of its determination.

28 (B) Thereupon the department shall reopen and continue its
29 investigation in compliance with all other requirements contained in this
30 chapter.

31 (c) If at any time before or during the investigation the department
32 is unable to locate or identify the alleged offender because the alleged
33 child maltreatment occurred more than five (5) years ago or in another state,
34 the department shall consider the report unable to be completed and place the
35 report in inactive status.

36

1 12-18-620. Release of information on pending investigation.

2 (a) Information on a pending investigation under this chapter is
3 confidential and may be disclosed only as provided in this chapter.

4 (b)(1) The Department of Human Services shall not release data that
5 would identify a person who made a report under this chapter unless a court
6 of competent jurisdiction orders release of the information after the court
7 has reviewed in camera the record related to the report and has found it has
8 reason to believe that the reporter knowingly made a false report.

9 (2) However, upon request, the information shall be disclosed to
10 the prosecuting attorney or law enforcement.

11 (c)(1) Any person or agency to whom disclosure is made shall not
12 disclose to any other person any information obtained pursuant to this
13 section.

14 (2) However, the person or agency is permitted to consult his or
15 her own attorney regarding the information in any notice provided by the
16 department.

17 (d) The department may provide information, including protected health
18 information, to a person or agency that provides services such as medical
19 examination of, an assessment interview with, or diagnosis of, care for,
20 treatment of, or supervision of a victim of maltreatment, a juvenile
21 offender, or an underaged juvenile aggressor.

22 (e) Information on a pending investigation, including protected health
23 information, shall be released upon request to:

24 (1) The Department of Human Services;

25 (2) Law enforcement;

26 (3) The prosecuting attorney;

27 (4) The appropriate multidisciplinary team;

28 (5) Attorney ad litem of the alleged victim or offender;

29 (6) Court Appointed Special Advocate of the alleged victim or
30 offender;

31 (7) Any licensing or registering authority to the extent
32 necessary to carry out its official responsibilities;

33 (8) Any department division director or facility director
34 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

35 (9) Any facility director receiving notice of a Child Abuse
36 Hotline report pursuant to this chapter; and

1 shall make a complete written report of the investigation by the conclusion
2 of a period of thirty (30) days.

3 (b) The report of the investigation shall include the following
4 information:

5 (1) The names and addresses of the child and his or her legal
6 parents and other caretakers of the child, if known;

7 (2) The child's age, sex, and race;

8 (3) The nature and extent of the child's present and past
9 injuries;

10 (4) The investigative determination;

11 (5) The nature and extent of the child maltreatment, including
12 any evidence of previous injuries or child maltreatment to the child or his
13 or her siblings;

14 (6) The name and address of the person responsible for the
15 injuries or child maltreatment if known;

16 (7) Services offered and accepted;

17 (8) Family composition;

18 (9) The source of the notification; and

19 (10) The person making the notification, his or her occupation,
20 and where he or she can be reached.

21 (c) The agency responsible for the investigation shall immediately
22 provide the Department of Human Services at no cost a copy of the written
23 report and any information gathered during the course of the investigation,
24 including statements from witnesses and transcripts of interviews.

25 (d) All information gathered during the course of the investigation
26 shall be contained in the file of the Department of Human Services whether or
27 not the information supports the investigative determination.

28 (e)(1) The department shall not release data that would identify the
29 person who made the report unless a court of competent jurisdiction orders
30 release of the information after the court has reviewed in camera the record
31 related to the report and has found it has reason to believe that the
32 reporter knowingly made a false report.

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

35 (f) The report, exclusive of information identifying the person making
36 the notification, shall be admissible in evidence in any proceeding related

1 to child maltreatment.

2 (g) Notwithstanding any provision of the Arkansas Rules of Evidence,
3 any privilege between a minister and any person confessing to or being
4 counseled by the minister shall not constitute grounds for excluding evidence
5 at any dependency-neglect proceeding or proceedings involving custody of a
6 child.

7
8 12-18-702. Investigative determination.

9 Upon completion of an investigation under this chapter, the Department
10 of Human Services shall determine whether the allegations of child
11 maltreatment are:

12 (1)(A) Unsubstantiated.

13 (B) An unsubstantiated determination shall be entered when
14 the allegation is not supported by a preponderance of the evidence;

15 (2)(A) True.

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

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

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

26 (ii) The offender is an underaged juvenile
27 aggressor; or

28 (iii) The report was true for neglect as defined
29 under § 12-18-103(13)(B); or

30 (3)(A) Inactive.

31 (B) If the investigation cannot be completed, the
32 investigation shall be determined incomplete and placed in inactive status.

33
34 12-18-703. Notice generally.

35 (a) The Department of Human Services shall notify each alleged
36 offender of the child maltreatment investigative determination whether true

1 or unsubstantiated.

2 (b) In every case in which a report is determined to be true, the
3 department shall notify the alleged offender of the investigative
4 determination by certified mail, restricted delivery or by process server.

5
6 12-18-704. Notice if the alleged offender is under 10 years of age.

7 (a) If the report was determined true and the alleged offender is a
8 child under ten (10) years of age at the time the act or omission occurred,
9 the Department of Human Services shall notify the legal parents and legal
10 guardians of the investigative determination and that the child's name shall
11 not be placed in the Child Maltreatment Central Registry.

12
13 12-18-705. Notice if the alleged offender is 10 years of age or
14 older.

15 (a) If the report was determined true and the alleged offender is a
16 child ten (10) years of age or older at the time the act or omission occurred
17 a notice shall be given as provided in this section.

18 (b) The notice under this section shall be provided as follows:

19 (1) If the child is in foster care, the Department of Human
20 Services shall notify the child's counsel and the legal parents, legal
21 guardians, and current foster parents of the alleged offender; or

22 (2) If the child is not in foster care, the department shall
23 notify the legal parents and legal guardians of the alleged offender.

24 (c) The notice under this section shall include the following:

25 (1) The investigative determination, excluding data that would
26 identify the person who made the report to the Child Abuse Hotline;

27 (2) A statement that the matter has been referred for an
28 automatic administrative hearing that may only be waived by the alleged
29 juvenile offender or his or her parent or legal guardian in writing;

30 (3) The potential consequences to the alleged juvenile offender
31 if the juvenile offender's name is placed in the Child Maltreatment Central
32 Registry;

33 (4) A statement that the person has a right to have an attorney,
34 and if the person cannot afford an attorney, to contact Legal Services;

35 (5) A statement that if the person's name is placed on the Child
36 Maltreatment Central Registry, that the person's name may be automatically

1 removed after one (1) year or the person may be able to petition for removal
2 after one (1) year, depending on the finding;

3 (6) A statement that the administrative hearing may take place
4 in person if requested by the alleged juvenile offender, the alleged juvenile
5 offender's parent or guardian, or the alleged offender's attorney within
6 thirty (30) days from the date that the alleged juvenile offender receives
7 notification under this section; and

8 (7) The name of the person making the notification to the
9 alleged juvenile offender, his or her title or position, and current contact
10 information.

11
12 12-18-706. Notice if the alleged offender is 18 years of age or
13 older.

14 Notification to an alleged offender who was eighteen (18) years of age
15 or older at the time of the act or omission that resulted in a true finding
16 of child maltreatment shall include the following:

17 (1) The investigative determination, excluding data that would
18 identify the person who made the report to the Child Abuse Hotline;

19 (2) A statement that the person named as the alleged offender of
20 the true report may request an administrative hearing;

21 (3) A statement that the request must be made to the department
22 within thirty (30) days of receipt of the service or certified mailing of the
23 notice of determination;

24 (4) The potential consequences to the person if the person's
25 name is placed on the Child Maltreatment Central Registry;

26 (5) A statement that the person has a right to have an attorney
27 and that if the person can't afford an attorney to contact Legal Services;

28 (6) A statement that if the person's name is placed on the Child
29 Maltreatment Central Registry that the person's name may be automatically
30 removed after one (1) year or the person may be able to petition for removal
31 after one (1) year, depending on the finding;

32 (7) The name of the person making the notification to the
33 alleged juvenile offender, his or her title or position, and current contact
34 information; and

35 (8) A statement that the administrative hearing may take place
36 in person if requested by the alleged offender or the alleged offender's

1 attorney within thirty (30) days from the date that the alleged offender
2 receives notification under this section.

3
4 12-18-707. Notice when the alleged offender works with children or is
5 engaged in child-related activities.

6 (a) If the child maltreatment investigative determination names as an
7 alleged offender a person who is engaged in child-related activities or
8 employment and the Department of Human Services has determined that children
9 under the care of the alleged offender appear to be at risk of maltreatment
10 by the alleged offender, the department may notify the following of the
11 investigative determination:

12 (1) An alleged offender's employer;

13 (2) A school superintendent, principal, or a person in an
14 equivalent position where the alleged offender is employed;

15 (3) A person in charge of a paid or volunteer activity; and

16 (4) Any licensing or registering authority to the extent
17 necessary to carry out its official responsibilities.

18 (b) The department shall promulgate rules that will ensure that
19 notification required under this section is specifically approved by a
20 responsible manager in the department before the notification is made.

21 (c) If the department later determines that there is no preponderance
22 of the evidence indicating that children under the care of the alleged
23 offender appear to be at risk, the department shall immediately notify the
24 previously notified person or entity of that information.

25
26 12-18-708. Miscellaneous notice requirements.

27 (a) Notification of an investigative determination under this chapter
28 shall be provided to:

29 (1) The appropriate multi-disciplinary team;

30 (2) The circuit court judge if the victim or offender has an
31 open dependency-neglect or family in need of services case;

32 (3) The attorney ad litem for any child who is named as the
33 victim or offender;

34 (4) The Court Appointed Special Advocate for any child named as
35 the alleged victim or offender;

36 (5) Any licensing or registering authority to the extent

1 necessary to carry out its official responsibilities;

2 (6) Any department division director or facility director
3 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

4 (7) Any facility director receiving notice of a Child Abuse
5 Hotline report pursuant to this chapter;

6 (8) The legal parents, legal guardians and current foster
7 parents of any child in foster care named as an alleged victim; and

8 (9) The Attorney ad litem and Court Appointed Special Advocate
9 volunteer of all other children in the same foster home if the child
10 maltreatment occurred in a foster home.

11 (b) If the investigative determination is unsubstantiated, the
12 Department of Human Services shall notify the mandated reporter who made the
13 underlying report.

14 (c) If the investigative determination is true, notification of the
15 investigative determination shall be provided to the school where the victim
16 child is enrolled. However, the name of the alleged offender shall not be
17 identified.

18
19 12-18-709. Confidentiality.

20 (a) Notice of an investigative determination under this chapter is
21 confidential and may be disclosed only as provided in this chapter.

22 (b)(1) The Department of Human Services shall not release data that
23 would identify the person who made the report unless a court of competent
24 jurisdiction orders release of the information after the court has reviewed,
25 in camera, the record related to the report and has found it has reason to
26 believe that the reporter knowingly made a false report.

27 (2) However, upon request, the information shall be disclosed to
28 the prosecuting attorney or law enforcement.

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

32 (2) However, the person or agency is permitted to consult his or
33 her own attorney regarding the information in any notice provided by the
34 department.

35 (d)(1) Notification of the investigative determination of severe
36 maltreatment shall be provided to the appropriate law enforcement agency and

1 the prosecuting attorney.

2 (2) The prosecuting attorney and law enforcement may provide
3 written notice to the department that the department does not need to provide
4 notice of investigative determinations.

5 (3) Upon receiving the notification, the department shall not be
6 required to provide notification of the investigative determination.

7 (e) The department shall notify each subject of the report of the
8 investigative determination whether true or unsubstantiated.

9
10 12-18-710. Release of information on true investigative determination
11 pending due process

12 (a) Information on a completed true investigation pending due process
13 as referenced in this chapter is confidential and may be disclosed only as
14 provided in this chapter.

15 (b)(1) The Department of Human Services shall not release data that
16 would identify the person who made the report unless a court of competent
17 jurisdiction orders release of the information after the court has reviewed
18 in camera the record related to the report and has found it has reason to
19 believe that the reporter knowingly made a false report.

20 (2) However, upon request, the information shall be disclosed to
21 the prosecuting attorney or law enforcement.

22 (c)(1) Any person or agency to whom disclosure is made shall not
23 disclose to any other person any information obtained pursuant to this
24 section.

25 (2) However, the person or agency is permitted to consult his or
26 her own attorney regarding the information in any notice provided by the
27 department.

28 (d) The department may provide information, including protected health
29 information, to a person or agency that provides services such as medical
30 examination of, an assessment interview with, or diagnosis of, care for,
31 treatment of, or supervision of a victim of maltreatment, a juvenile
32 offender, or an underaged juvenile aggressor.

33 (e) Information on a completed investigation, including protected
34 health information, pending due process shall be released upon request to:

35 (1) The alleged offender;

36 (2) The department;

- 1 (3) Law enforcement;
2 (4) The prosecuting attorney;
3 (5) The appropriate multidisciplinary team;
4 (6) Attorney ad litem for the victim or offender;
5 (7) Court Appointed Special Advocate for the victim or offender;
6 (8) Any licensing or registering authority to the extent
7 necessary to carry out its official responsibilities;
8 (9) Any department division director or facility director
9 receiving notice of a Child Abuse Hotline report pursuant to this chapter;
10 (10) Any facility director receiving notice of a Child Abuse
11 Hotline report pursuant to this chapter; and
12 (11)(i) Acting in their official capacities, individual United
13 States and Arkansas senators and representatives and their authorized staff
14 members but only if they agree not to permit any re-disclosure of the
15 information.
16 (ii) However, disclosure shall not be made to any
17 committee or legislative body.
18 (f) Information on a true investigative determination, including
19 protected health information, may be released to or disclosed in a circuit
20 court child custody case or similar case if:
21 (1) No seventy-two-hour hold has been exercised under this
22 chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, §
23 9-27-301 et seq.;
24 (2) Written notice of intent to request release or disclosure is
25 provided to the investigating agency at least five (5) days before the date
26 for release or disclosure;
27 (3) The investigating agency has the opportunity to appear
28 before the court and be heard on the issue of release or disclosure;
29 (4) The information gathered by the investigative agency is
30 necessary for the determination of an issue before the court;
31 (5) Waiting until completion of due process will jeopardize the
32 health or safety of the child in the custody case;
33 (6) A protective order is issued to prevent redisclosure of the
34 information provided by the investigating agency or the information is
35 released or disclosed only to the court in camera; and
36 (7) Release or disclosure of the information will not compromise

1 a criminal investigation.

2 (g) Information on true investigative determination, including
3 protected health information, may be released to or disclosed in the circuit
4 court if the victim or offender has an open dependency-neglect or family in
5 need of services case before the circuit court.

6
7 12-18-711. Fee for copying investigative file.

8 (a) Except as provided under subsection (b) of this section, the
9 Department of Human Services may charge:

10 (1) A reasonable fee not to exceed ten dollars (\$10.00) for
11 researching, copying, and mailing records of an investigative file under this
12 chapter; and

13 (2) A reasonable fee for reproducing copies of tapes and
14 photographs.

15 (b) A fee shall not be charged to:

16 (1) A nonprofit or volunteer agency that requests searches of
17 the investigative files; or

18 (2) A person who is indigent.

19
20 Subchapter 8

21 Administrative Hearings.

22
23 12-18-801. Time to complete administrative hearing.

24 (a)(1)(A) The administrative hearing process under this chapter must
25 be completed within one hundred eighty (180) days from the date of the
26 receipt of the request for a hearing, or the administrative law judge shall
27 enter an order overturning the investigative agency's investigative
28 determination of true.

29 (B) However, delays in completing the administrative
30 hearing that are attributable to the petitioner shall not count against the
31 limit of one hundred eighty (180) days.

32 (2)(A) If an order is entered overturning the investigating
33 agency's investigative determination of true because of the failure to
34 complete the administrative hearing process within one hundred eighty (180)
35 days, the Department of Human Services shall report any failures to comply
36 with this subsection for each quarter to the House Interim Committee on

1 Aging, Children and Youth, Legislative and Military Affairs and the Senate
2 Interim Committee on Children and Youth.

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

7 (b)(1) The limit of one hundred eighty (180) days for an
8 administrative hearing under this chapter shall not apply if there is an
9 ongoing criminal or delinquency investigation or criminal or delinquency
10 charges have been filed or will be filed regarding the occurrence that is the
11 subject of the child maltreatment report.

12 (2) In a case described under subdivision (b)(1) of this
13 section, the administrative hearing shall be stayed pending final disposition
14 of the criminal or delinquency proceedings.

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

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

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

23 (6) If the criminal or delinquency proceedings have not reached
24 a final outcome within twelve (12) months of the filing of the request for
25 administrative hearing, the administrative appeal will be deemed waived if
26 the petitioner fails to provide a written statement of the status of the
27 criminal or delinquency proceedings every sixty (60) days and a disposition
28 report within thirty (30) days of the entry of a dispositive judgment or
29 order.

30
31 12-18-802. Subpoenas – Form.

32 (a) When the Department of Human Services conducts an administrative
33 hearing, the chief counsel of the department may require the attendance of
34 witnesses and the production of books, records, or other documents through
35 the issuance of subpoenas when that testimony or information is necessary to
36 adequately present the position of the department, the investigating agency,

1 or the alleged offender.

2 (b) Failure to obey the subpoena may be deemed contempt, punishable
3 accordingly.

4 (c) Requests for subpoenas shall be granted by the chief counsel of
5 the Department of Human Services or a designee if the testimony or documents
6 desired are considered necessary and material without being unduly
7 repetitious of other available evidence.

8 (d) Subpoenas issued pursuant to the authority of the chief counsel of
9 the department shall be substantially in the following form:

10 “The State of Arkansas to the Sheriff of _____ County: You
11 are commanded to subpoena (name) _____, (address)
12 , to attend a proceeding before the Department of Human Services to be held
13 at on the _____ day of _____, 20 _____, at _____ m., and testify and/or
14 produce the following books, records, or other documents, to wit:
15 in a matter of (style of proceeding)

16 _____ to be conducted under the authority
17 of _____ . WITNESS my hand this _____ day of
18 _____, 20 _____ .

19 _____
20 Chief Counsel or designee, Department of Human
21 Services”

22 (e)(1) Subpoenas issued under this section shall be served in the
23 manner as now provided by law, returned, and a copy made and kept by the
24 department.

25 (2) The fees and mileage for officers serving the subpoenas and
26 witnesses answering the subpoenas shall be the same as now provided by law.

27 (f) Witnesses duly served with subpoenas issued pursuant to the
28 authority provided in this section who refuse to testify or give evidence may
29 be cited on affidavit through application of the chief counsel of the
30 department to the Pulaski County Circuit Court or any circuit court of the
31 state where the subpoenas were served.

32 (g) If any child served with a subpoena to be a witness in an
33 administrative hearing is a party to an open dependency-neglect or family in
34 need of services case, the child’s attorney ad litem shall be provided a copy
35 of the subpoena.

36

1 12-18-803. Privileged communications as evidence – Exception.

2 (a) It is the public policy of the State of Arkansas to protect the
3 health, safety, and the welfare of children within the state.

4 (b) No privilege, except that between a lawyer and client or between a
5 minister, including a Christian Science practitioner, and a person confessing
6 to or being counseled by the minister, shall prevent anyone from testifying
7 concerning child maltreatment.

8 (c) When a physician, psychologist, psychiatrist, or licensed
9 counselor or therapist conducts interviews with or provides therapy to a
10 subject of a report of suspected child maltreatment for purposes related to
11 child maltreatment, the physician, psychologist, psychiatrist, or licensed
12 counselor or therapist is deemed to be performing services on behalf of the
13 child.

14 (d) An adult subject of a report of suspected child maltreatment
15 cannot invoke privilege on the child's behalf.

16
17 12-18-804. Defenses and affirmative defenses.

18 For any act or omission of child maltreatment that would be a criminal
19 offense or an act of delinquency, any defense or affirmative defense that
20 would be applicable to the criminal offense or delinquent act is also
21 cognizable in a child maltreatment proceeding.

22
23 12-18-805. Video teleconferencing and teleconferencing options.

24 (a)(1) An administrative law judge may conduct an administrative
25 hearing under this chapter by video teleconference in lieu of an in-person
26 hearing.

27 (2) If neither party requests that the administrative hearing be
28 conducted in person, the administrative hearing shall be conducted
29 telephonically.

30 (b) If any party requests an in-person administrative hearing within
31 thirty (30) days from the date that the party receives notification, the in-
32 person administrative hearing shall be conducted in an office of the
33 Department of Human Services nearest to the petitioner's residence unless the
34 administrative law judge notifies the parties that the administrative hearing
35 will be conducted via video teleconference.

36 (c)(1) The Office of Appeals and Hearings of the Department of Human

1 Services shall designate the sites to be used for video teleconference
2 administrative hearings.

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

5 (A) Arkadelphia;

6 (B) Booneville;

7 (C) Conway;

8 (D) Fayetteville;

9 (E) Jonesboro;

10 (F) Little Rock; and

11 (G) Warren.

12 (3) The office may designate additional sites for video
13 teleconference administrative hearings.

14 (4) A site for a video teleconference administrative hearing
15 shall include the location designated by the office that is nearest to the
16 petitioner's residence.

17 (5) The administrative law judge and other parties may agree to
18 appear at the location designated by the office or at any other designated
19 administrative hearing locations that are convenient to them.

20
21 12-18-806. Continuances.

22 (a)(1) An administrative law judge shall grant a continuance if the
23 record under this chapter tendered by the Department of Human Services to the
24 alleged offender is determined by the administrative law judge to be
25 incomplete.

26 (2) The administrative law judge shall direct the department to
27 make diligent inquiry and obtain the missing information to supplement the
28 record if:

29 (A) The department receives further information;

30 (B) The alleged offender gives notice of the existence of
31 further information; or

32 (C) The department examines the record and determines that
33 additional information exists.

34 (3) If additional information is found to exist, the record
35 shall be supplemented, and the department shall provide a copy of the
36 supplemented record to the alleged offender.

1 (b) At least ten (10) days prior to the administrative hearing, the
2 alleged offender and the department shall share any information with the
3 other party that the party intends to introduce into evidence at the
4 administrative hearing that is not contained in the record.

5 (c) If a party fails to timely share information, the administrative
6 law judge shall:

7 (1) Grant a continuance;

8 (2) Allow the record to remain open for submission of rebuttal
9 evidence; or

10 (3) Reject the information as not relevant to the incident of
11 child maltreatment.

12 (d) Any time accrued during the continuance or allowing the record to
13 remain open shall not be counted in the one-hundred-eighty-day time period to
14 complete the administrative hearing.

15
16 12-18-807. Administrative judgments and adjudications.

17 (a) A certified copy of a judgment or an adjudication from a court of
18 competent jurisdiction dealing with the same subject matter as an issue
19 concerned in an administrative hearing under this chapter shall be filed with
20 the Office of Appeals and Hearings of the Department of Human Services.

21 (b)(1) A decision on any identical issue shall be rendered without an
22 administrative hearing and shall be consistent with the judgment or
23 adjudication.

24 (2) However, if the judgment or adjudication of the court is
25 reversed or vacated and notice of the reversal or vacation is provided to the
26 department, the Department of Human Services shall set the matter for an
27 administrative hearing.

28
29 12-18-808. Notice of juvenile division circuit court proceedings.

30 (a) The Department of Human Services shall notify the administrative
31 law judge and the petitioner of the status of any juvenile division of
32 circuit court proceeding involving the victim if child maltreatment at issue
33 in the administrative hearing proceeding is also an issue in the juvenile
34 division of circuit court proceeding.

35 (b) Notice from the department under this section shall also include
36 whether the department exercised a seventy-two-hour hold on the victim and

1 released the child or if the department or division of circuit court
2 dismissed a petition for emergency custody or dependency-neglect.

3
4 12-18-809. Confidentiality.

5 (a) An administrative hearing decision under this chapter and all
6 exhibits submitted at the hearing are confidential and shall remain
7 confidential upon the filing of an appeal with a circuit court or an
8 appellate court.

9 (b) An administrative hearing decision under this chapter that upholds
10 the agency investigative determination of true may be used or disclosed only
11 as provided in this chapter.

12 (c) An administrative hearing decision under this chapter that
13 overturns the agency investigative determination of true may be used or
14 disclosed only as provided in this chapter.

15
16 12-18-810. Authority to amend investigative determinations based on
17 evidence.

18 (a) An administrative law judge may amend an investigative
19 determination to conform with the evidence presented.

20 (b)(1) If the alleged offender could not reasonably infer the amended
21 investigative determination from the investigative record and information
22 submitted by the Department of Human Services, the administrative law judge
23 shall, upon request, grant a continuance to the alleged offender.

24 (2) However, an amendment of the investigative determination any
25 shall not be done after the conclusion of the hearing.

26
27 12-18-811. Expedited administrative hearings.

28 (a)(1) If an alleged offender timely requests an administrative
29 hearing, the Department of Human Services may request that the administrative
30 hearing be expedited if the alleged offender is engaged in child-related
31 activities or employment or the alleged offender is employed or a volunteer
32 with persons with disabilities, persons with mental illnesses, or elderly
33 persons.

34 (2) The alleged offender shall have five (5) days from date of
35 receipt of the request for an expedited administrative hearing to object to
36 any request to expedite the administrative hearing.

1 (b) The expedited administrative hearing shall be granted if any of
2 the following are at risk because of the alleged offender's employment or
3 volunteer activities:

4 (1) Children;

5 (2) The elderly; or

6 (3) Persons with disabilities or mental illnesses.

7 (c) If the administrative hearing is expedited, the department shall
8 immediately make the investigative file available to the alleged offender.

9 (d)(1) The department may charge:

10 (A) A reasonable fee not to exceed ten dollars (\$10.00)
11 for researching, copying, and mailing records of the investigative file; and

12 (B) A reasonable fee for reproducing copies of tapes and
13 photographs.

14 (2) A fee shall not be charged to a person who is indigent.

15 (e)(1) Unless waived by the alleged offender, the expedited
16 administrative hearing process shall not be held until at least thirty (30)
17 days have elapsed after the investigative file is made available to the
18 alleged offender.

19 (2) As used in this section, "made available" means notification
20 to the offender or his or her attorney that a copy of the investigative
21 record is available for pick up at the department office in the county in
22 which the alleged offender resides or in the department office in the county
23 designated by the alleged offender or his or her attorney.

24
25 12-18-812. Preliminary administrative hearing.

26 (a) If the Department of Human Services is unable to notify an
27 offender of an investigative determination under this chapter, the department
28 may request a preliminary administrative hearing to allow provisional
29 placement of the offender's name in the Child Maltreatment Central Registry.

30 (b) The department must prove that the department diligently attempted
31 to notify the alleged offender of the investigative determination,
32 specifically, that the department used a reasonable degree of care to
33 ascertain the offender's whereabouts and notify the offender.

34 (c) The department shall notify the administrative law judge of any
35 criminal action related to the investigation.

36 (d) At the preliminary administrative hearing, the administrative law

1 judge shall determine whether a prima facie case exists that:

2 (1) The offender committed child maltreatment, that is, whether
3 a preponderance of the evidence supports a finding that the allegations are
4 true; and

5 (2) A child, elderly person, person with a disability, or a
6 person with mental illness may be at risk of harm.

7 (e) If the administrative law judge determines there is not a prima
8 facie case, the department shall not at that time place the alleged
9 offender's name in the Child Maltreatment Central Registry but may continue
10 to provide notice to the alleged offender for a regular administrative
11 hearing.

12 (f) If the administrative law judge determines there is a prima facie
13 case, the administrative law judge shall direct that the offender's name
14 shall be provisionally placed in the Child Maltreatment Central Registry.

15 (g)(1) If an offender's name is provisionally placed in the Child
16 Maltreatment Central Registry the alleged offender may request a regular
17 administrative hearing within thirty (30) days of receipt of the notice of
18 the investigative determination.

19 (2) Failure to timely request a regular administrative hearing
20 shall result in a finding by the administrative law judge that the
21 provisional designation shall be removed and the offender's name shall be
22 officially placed in the Child Maltreatment Central Registry.

23
24 12-18-813. Notice of investigative determination upon satisfaction of
25 due process.

26 (a)(1) Due process has been satisfied when:

27 (A) The alleged offender eighteen (18) years of age or
28 older at the time the act or omission occurred was provided written notice of
29 the true investigative determination as required by this chapter but failed
30 to timely request an administrative hearing;

31 (B) The alleged offender eighteen (18) years of age or
32 older at the time the act or omission occurred timely requested an
33 administrative hearing and a decision has been issued by the administrative
34 law judge; or

35 (C) The alleged offender was a child at the time the act
36 or omission occurred and the child or his or her legal parent or legal

1 guardian waived the administrative hearing or the administrative law judge
2 issued a decision.

3 (2) Upon satisfaction of due process, if the investigative
4 determination is true, the alleged offender's name shall be placed in the
5 Child Maltreatment Central Registry.

6 (b) If the person or agency making the initial notification of
7 suspected child maltreatment is a mandated reporter, the Department of Human
8 Services shall provide to the mandated reporter the following information:

9 (1) The investigative determination; and

10 (2) Services offered and provided.

11 (c)(1) Upon satisfaction of due process and if the investigative
12 determination is true, the department shall provide the local educational
13 agency, specifically the school counselor at the school the maltreated child
14 attends, a report including the name and relationship of the offender to the
15 maltreated child and the services offered or provided by the department to
16 the child.

17 (2) Upon completion of due process, the department shall provide
18 the local educational agency, specifically the school counselor at the school
19 the maltreated child attends, a report indicating the department's true
20 investigative determination on any child age ten (10) or older who is named
21 as the offender in a true report and the services offered or provided by the
22 department to the juvenile offender.

23 (3) Any local educational agency receiving information under
24 this section from the department shall make this information, if it is a true
25 report, confidential and a part of the child's permanent educational record
26 and shall treat information under this section as educational records are
27 treated under the Family Educational Rights and Privacy Act, 20 U.S.C. §
28 1232g.

29 (d)(1) Upon satisfaction of due process and if the investigative
30 determination is true, if the offender is engaged in child-related activities
31 or employment and the department has determined that children under the care
32 of the offender appear to be at risk of maltreatment by the offender, the
33 department may notify the following of the investigative determination:

34 (A) The offender's employer;

35 (B) A school superintendent, principal, or a person in an
36 equivalent position where the offender is employed;

1 (C) A person in charge of a paid or volunteer activity;
2 and

3 (D) Any licensing or registering authority to the extent
4 necessary to carry out its official responsibilities.

5 (2) The department shall promulgate rules that shall ensure that
6 notification required under this subsection is specifically approved by a
7 responsible manager in the department before the notification is made.

8 (3) If the department later determines that there is not a
9 preponderance of the evidence indicating that children under the care of the
10 alleged offender appear to be at risk, the department shall immediately
11 notify the previously notified person or entity of that information.

12 (e) Upon satisfaction of due process, if the victim or offender is in
13 foster care, notification of the investigative determination shall be
14 provided to:

15 (1) The legal parents, legal guardians, and current foster
16 parents of the victim; and

17 (2) The attorney ad litem and Court Appointed Special Advocate
18 volunteer of any other children in the same foster home if the maltreatment
19 occurred in the foster home.

20 (f) Upon satisfaction of due process, notification of the
21 investigative determination shall be provided to the following:

22 (1) All subjects of the report;

23 (2) The juvenile division of circuit court if the child has an
24 open dependency-neglect or family in need of services case and the child was
25 named as a victim or offender;

26 (3) The attorney ad litem;

27 (4) Any person appointed by the court as the Court Appointed
28 Special Advocate volunteer;

29 (5) The appropriate multidisciplinary team;

30 (6) A Child Safety Center if involved in the investigation;

31 (7) Law Enforcement;

32 (8) The prosecuting attorney in cases of severe maltreatment;

33 (9) Any licensing or registering authority to the extent
34 necessary to carry out its official responsibilities;

35 (10) Any department division director or facility director
36 receiving notice of a Child Abuse Hotline report pursuant to this chapter;

1 (3) The name was provisionally placed in the Child Maltreatment
2 Central Registry and the alleged offender subsequently prevails at an
3 administrative hearing; or

4 (4) The offender prevails upon appeal.

5
6 12-18-905. Provisional placement in the central registry.

7 If an alleged offender's name is provisionally placed in the Child
8 Maltreatment Central Registry, any disclosure by the Child Maltreatment
9 Central Registry shall include the notation that the name has only been
10 provisionally placed in the Child Maltreatment Central Registry.

11
12 12-18-906. Allegations determined to be unsubstantiated not to be
13 included.

14 Records of all cases in which allegations are determined to be
15 unsubstantiated shall not be included in the Child Maltreatment Central
16 Registry.

17
18 12-18-907. Rules.

19 The Department of Human Services may adopt rules as may be necessary to
20 encourage cooperation with other states in exchanging true reports and to
21 effect a national registration system.

22
23 12-18-908. Removal of Name from the Child Maltreatment Central
24 Registry.

25 (a) If an adult offender is found guilty of, pleads guilty to, or
26 pleads nolo contendere to an act that is the same act for which the offender
27 is named in the Child Maltreatment Central Registry regardless of any
28 subsequent expungement of the offense from the offender's criminal record,
29 the offender shall always remain in the Child Maltreatment Central Registry
30 unless the conviction is reversed or vacated.

31 (b)(1) The Department of Human Services shall identify in its policy
32 and procedures manual the types of child maltreatment that shall
33 automatically result in the removal of the name of an offender from the Child
34 Maltreatment Central Registry.

35 (2) If an offender has been entered into the Child Maltreatment
36 Central Registry as an offender for the named types of child maltreatment

1 identified under subdivision (b)(1) of this section, the offender's name
2 shall be removed from the Child Maltreatment Central Registry on reports of
3 this type of child maltreatment if the offender has not had a subsequent true
4 report of this type for one (1) year and more than one (1) year has passed
5 since the offender's name was placed on the Child Maltreatment Central
6 Registry.

7 (c)(1) The department shall identify in its policy and procedures
8 manual the types of child maltreatment for which an offender can request that
9 the offender's name be removed from the Child Maltreatment Central Registry.

10 (2)(A) If an offender has been entered into the Child
11 Maltreatment Central Registry as an offender for the named types of child
12 maltreatment identified under subdivision (c)(1) of this section, the
13 offender may petition the department requesting that the offender's name be
14 removed from the Child Maltreatment Central Registry if the offender has not
15 had a subsequent true report of this type for one (1) year and more than one
16 (1) year has passed since the offender's name was placed on the Child
17 Maltreatment Central Registry.

18 (B) If the department denies the request for removal of
19 the name from the Child Maltreatment Central Registry, the offender shall
20 wait one (1) year from the date of the request for removal before filing a
21 new petition with the department requesting that the offender's name be
22 removed from the Child Maltreatment Central Registry.

23 (3) The department shall develop policy and procedures to assist
24 it in determining whether to remove the offender's name from the Child
25 Maltreatment Central Registry.

26 (d) Notwithstanding the provisions of this subchapter, with regard to
27 an offender who was a child at the time of the act or omission that resulted
28 in a true finding of child maltreatment, the department shall:

29 (1) Not remove the offender's name from the Child Maltreatment
30 Central Registry if the offender was found guilty of, pleaded guilty to, or
31 pleaded nolo contendere to a felony in circuit court as an adult for the act
32 that is the same act for which the offender is named in the Child
33 Maltreatment Central Registry unless the conviction is reversed or vacated;
34 or

35 (2) Remove the offender's name from the Child Maltreatment
36 Central Registry if:

1 (A) The juvenile has reached the age of eighteen (18)
2 years of age or more than one (1) year has passed from the date of the act or
3 omission that caused the true finding of child maltreatment and there have
4 been no subsequent acts or omissions resulting in a true finding of child
5 maltreatment; and

6 (B) The offender can prove by a preponderance of the
7 evidence that the juvenile offender has been rehabilitated.

8 (3) If the department denies the request for removal of the name
9 from the Child Maltreatment Central Registry, the offender shall wait one (1)
10 year from the date of the request for removal before filing a new petition
11 with the department requesting that the offender's name be removed from the
12 Child Maltreatment Central Registry.

13 (e)(1)(A) If the department denies the request for removal of the name
14 from the Child Maltreatment Central Registry, the offender may request an
15 administrative hearing within thirty (30) days from receipt of the
16 department's decision.

17 (ii) The standard on review for the administrative
18 hearing shall be whether the department abused its discretion.

19 (2)(A) At least ten (10) days prior to the administrative
20 hearing, the alleged offender and the department shall share any information
21 with the other party that the party intends to introduce into evidence at the
22 administrative hearing that is not contained in the record.

23 (B) If a party fails to timely share information, the
24 administrative law judge shall:

25 (i) Grant a continuance;

26 (ii) Allow the record to remain open for submission
27 of rebuttal evidence; or

28 (iii) Reject the information as not relevant to the
29 rehabilitation or the incident of child maltreatment.

30 (f) The Director of the Department of Human Services shall adopt rules
31 necessary to carry out this chapter pursuant to the Arkansas Administrative
32 Procedure Act, § 25-15-201 et seq., except that the director shall not begin
33 the process under the Arkansas Administrative Procedure Act, § 25-15-201 et
34 seq., until the proposed rules have been reviewed by the House Interim
35 Committee on Aging, Children and Youth, Legislative and Military Affairs and
36 the Senate Interim Committee on Children and Youth.

1
2 12-18-909. Availability of true reports of child maltreatment from the
3 central registry.

4 (a) True reports of child maltreatment are confidential and may be
5 disclosed only as provided in this chapter.

6 (b)(1) The Department of Human Services may charge:

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

10 (B) A reasonable fee for reproducing copies of tapes and
11 photographs.

12 (2) A fee may not be charged to:

13 (A) A nonprofit or volunteer agency that requests searches
14 of the investigative files; or

15 (B) A person who is indigent.

16 (c)(1) The department shall not release data that would identify the
17 person who made the report unless a court of competent jurisdiction orders
18 release of the information after the court has reviewed in camera the record
19 related to the report and has found it has reason to believe that the
20 reporter knowingly made a false report.

21 (2) However, upon request, the information shall be disclosed to
22 the prosecuting attorney or law enforcement.

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

26 (2) However, the person or agency is permitted to consult his or
27 her own attorney regarding information provided by the department.

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

33 (4) Nothing in this chapter shall be construed to prevent
34 subsequent disclosure by the subject of the report.

35 (e)(1) The department may provide information, including protected
36 health information, to a person or agency that provides services such as

1 medical examination of, an assessment interview with, or diagnosis of, care
2 for, treatment of, or supervision of a victim of maltreatment, a juvenile
3 offender, or an underaged juvenile aggressor.

4 (2) This information may include:

5 (A) The investigative determination or the investigation
6 report; and

7 (B) The services offered and provided.

8 (f) If an alleged offender's name has been provisionally placed in the
9 central registry, any disclosure by the central registry shall include the
10 notation that the name has only been provisionally placed in the central
11 registry.

12 (g) A report made under this chapter that is determined to be true, as
13 well as any other information obtained, including protected health
14 information, and a report written or photograph or radiological procedure
15 taken concerning a true report in the possession of the Department of Human
16 Services shall be confidential and shall be made available only to:

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

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

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

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

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

31 (6)(A) To a person, agency, or organization engaged in a bona
32 fide research or evaluation project having value as determined by the
33 department in future planning for programs for maltreated children or in
34 developing policy directions.

35 (B) However, any confidential information provided for a
36 research or evaluation project under this subdivision shall not be re-

1 disclosed.

2 (C) However, if a research or evaluation project results
3 in the publication of related material, confidential information provided for
4 a research or evaluation project under this subdivision shall not be
5 disclosed;

6 (7) A properly constituted authority, including
7 multidisciplinary teams referenced in this chapter, investigating a report of
8 known or suspected child abuse or neglect or providing services to a child or
9 family that is the subject of a report;

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

16 (B) This disclosure shall be for the limited purpose of
17 providing Child Maltreatment Central Registry background information and
18 shall indicate a true finding only;

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

21 (10) Child fatality review panels as authorized by the
22 department;

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

26 (B) The grand jury or court may disclose it to parties to
27 a legal proceeding upon a finding that the report is necessary for the
28 presentation of a party's complaint or defense and under such terms or
29 protective order that the court orders;

30 (12) The current foster parents of a child who is a subject of a
31 report;

32 (13)(A) Acting in their official capacities, individual United
33 States and Arkansas senators and representatives and their authorized staff
34 members but only if they agree not to permit any re-disclosure of the
35 information.

36 (B) However, disclosure shall not be made to any committee

1 or legislative body of any information that identifies any recipient of
2 services by name or address;

3 (14) A Court Appointed Special Advocate upon presentation of an
4 order of appointment for a child who is a subject of a report;

5 (15) The attorney ad litem of a child who is the subject of a
6 report;

7 (16)(A) An employer or volunteer agency for purposes of
8 screening an employee, applicant, or volunteer who is or will be engaged in
9 employment or activity with children, the elderly, individuals with
10 disabilities, or individuals with mental illness upon submission of a signed,
11 notarized release from the employee, applicant, or volunteer.

12 (B) The registry shall release only the following
13 information on true reports to the employer or agency:

14 (i) That the employee, applicant, or volunteer has a
15 true report;

16 (ii) The date the investigation was completed; and

17 (iii) The type of true report;

18 (17) The Division of Developmental Disabilities Services and the
19 Division of Aging and Adult Services as to participants of the waiver
20 program;

21 (18) The Division of Child Care and Early Childhood Education of
22 the Department of Human Services for purposes of enforcement of licensing
23 laws and regulations;

24 (19) Any licensing or registering authority to the extent
25 necessary to carry out its official responsibilities;

26 (20) Any person or entity to whom notification was provided
27 under this chapter; and

28 (21) Any school superintendent, principal, or a person in an
29 equivalent position, or the Department of Education to the extent necessary
30 to carry out its responsibility to ensure that children are protected while
31 in the school environment or during off-campus school activities.

32
33 12-18-910. Availability of screened out and unsubstantiated reports.

34 (a) Screened out and unsubstantiated reports of child maltreatment are
35 confidential and may be disclosed only as provided in this chapter.

36 (b)(1) The Department of Human Services may charge:

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

4 (B) A reasonable fee for reproducing copies of tapes and
5 photographs.

6 (2) A fee shall not be charged to:

7 (A) A nonprofit or volunteer agency that requests searches
8 of the investigative files; or

9 (B) A person who is indigent.

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

15 (2) However, upon request, the information shall be disclosed to
16 the prosecuting attorney or law enforcement.

17 (d)(1) Any person or agency to whom disclosure is made shall not
18 disclose to any other person a report or other information obtained pursuant
19 to this section.

20 (2) However, the person or agency is permitted to consult his or
21 her own attorney regarding information provided by the department.

22 (3) Nothing in this chapter shall be construed to prevent
23 subsequent disclosure by the subject of the report.

24 (e) Any record of a screened-out report of child maltreatment shall
25 not be disclosed except to the prosecuting attorney and law enforcement and
26 may be used only within the department for purposes of administration of the
27 program.

28 (f) An unsubstantiated report, including protected health information,
29 shall be confidential and shall be disclosed only to:

30 (1) The prosecuting attorney;

31 (2) A subject of the report;

32 (3)(A) A grand jury or court upon a finding that information in
33 the record is necessary for the determination of an issue before the court or
34 grand jury; and

35 (B) The grand jury or court may disclose it to parties to
36 a legal proceeding upon a finding that the report is necessary for the

1 presentation of a party's complaint or defense and under such terms or
2 protective order that the court orders;

3 (4)(A) Acting in their official capacities, individual United
4 States and Arkansas senators and representatives and their authorized staff
5 members but only if they agree not to permit any re-disclosure of the
6 information.

7 (B) However, disclosure shall not be made to any committee
8 or legislative body of any information that identifies any recipient of
9 services by name or address;

10 (5) Law enforcement;

11 (6) Any licensing or registering authority to the extent
12 necessary to carry out its official responsibilities;

13 (7) Adult protective services;

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

17 (9) A Court Appointed Special Advocate upon presentation of an
18 order of appointment for a child who is a subject of a report;

19 (10) The attorney ad litem of a child who is the subject of a
20 report; and

21 (11) Any person or entity to whom notification was provided
22 under this chapter.

23 (g) Hard copy records of unsubstantiated reports shall be retained no
24 longer than eighteen (18) months for purposes of audit.

25 (h) Information on unsubstantiated reports included in the automated
26 data system shall be retained indefinitely to assist the department in
27 assessing future risk and safety.

28
29 Subchapter 10

30 Protective Custody.

31
32 12-18-1001. Protective custody generally.

33 (a) A police officer, law enforcement, a juvenile division of circuit
34 court judge during juvenile proceedings concerning the child or a sibling of
35 the child, or a designated employee of the Department of Human Services may
36 take a child into custody or any person in charge of a hospital or similar

1 institution or any physician treating a child may keep that child in his or
2 her custody without the consent of the parent or the guardian, whether or not
3 additional medical treatment is required, if:

4 (1) The child is subjected to neglect as defined under § 12-18-
5 103(13)(B) and the department assesses the family and determines that the
6 newborn and any other children, including siblings, under the custody or care
7 of the mother are at substantial risk of serious harm such that the children
8 need to be removed from the custody or care of the mother;

9 (2) The child is dependent as defined in the Arkansas Juvenile
10 Code of 1989, § 9-27-301 et seq.; or

11 (3) Circumstances or conditions of the child are such that
12 continuing in his or her place of residence or in the care and custody of the
13 parent, guardian, custodian, or caretaker presents an immediate danger of
14 severe maltreatment.

15 (b) However, custody shall not exceed seventy-two (72) hours except in
16 the event that the expiration of seventy-two (72) hours falls on a weekend or
17 holiday, in which case custody may be extended through the next business day
18 following the weekend or holiday.

19
20 12-18-1002. Placement in a foster home.

21 A sheriff or chief of police may place a child in a Department of Human
22 Services foster home if:

23 (1) The sheriff or chief of police contacts the on-call worker
24 for the department and does not get a return phone call within thirty (30)
25 minutes;

26 (2) The sheriff or chief of police contacts the department
27 Emergency Notification Line and does not get a return phone call within
28 fifteen (15) minutes;

29 (3) The foster parent is personally well-known to the sheriff or
30 the chief of police;

31 (4) The sheriff or chief of police has:

32 (A) Determined that the foster parent's home is safe and
33 provides adequate accommodations for the child; and

34 (B) Performed a criminal record and child maltreatment
35 check on the foster parent as required under § 9-28-409; and

36 (5) On the next business day, the sheriff or chief of police

1 immediately notifies the department of the time and date that the child was
2 placed in the foster parent's home.

3
4 12-18-1003. Consent for health care and services.

5 An individual taking a child into custody may give effective consent
6 for medical, dental, health, and hospital services during protective custody.

7
8 12-18-1004. Notice when custody is invoked.

9 In any case in which custody is invoked, the individual taking the
10 child into custody shall notify the Department of Human Services in order
11 that a child protective proceeding may be initiated within the time specified
12 in this subchapter.

13
14 12-18-1005. Location.

15 (a) A school, residential facility, hospital, or similar institution
16 where a child may be located shall not require a written order for the
17 Department of Human Services to take a seventy-two hour hold under this
18 section or § 9-27-313.

19 (b) Upon notice by the Department of Human Services that a hold has
20 been taken on a child, a school, residential facility, hospital, or similar
21 institution where the child is located shall:

22 (1) Retain the child until the department takes a hold on the
23 child;

24 (2) Not notify the parent until the child has been removed by
25 the department; and

26 (3) Provide the parent or guardian with the name and contact
27 information of the department employee regarding the hold on the child.

28
29 12-18-1006. Custody of children generally — Health and safety of the
30 child.

31 (a) During the course of any child maltreatment investigation, whether
32 conducted by the Department of Human Services, the Department of Arkansas
33 State Police, or local law enforcement, the Department of Human Services
34 shall assess whether or not the child can safely remain in the home.

35 (b) The child's health and safety shall be the paramount concern in
36 determining whether or not to remove a child from the custody of his or her

1 parents.

2
3 12-18-1007. Services to families generally.

4 (a) The Department of Human Services shall have the authority to make
5 referrals or provide services during the course of a child maltreatment
6 investigation.

7 (b) Any family may request supportive services from the Department of
8 Human Services.

9 (c) Supportive services shall be offered for the purpose of preventing
10 child maltreatment.

11
12 12-18-1008. Removal from home — Procedure.

13 (a) If an investigation under this chapter determines that the child
14 cannot safely remain at home, the Department of Human Services shall take
15 steps to remove the child under custody as outlined in this chapter or
16 pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

17 (b) After the Department of Human Services has removed the child, the
18 child shall be placed in a licensed or approved foster home, shelter,
19 facility, or an exempt child welfare agency as defined at § 9-28-402(12).

20 (c) No one, including the family, the Department of Human Services,
21 the Department of Arkansas State Police, or local law enforcement shall allow
22 a child to be placed in a nonapproved or nonlicensed foster home, shelter, or
23 facility.

24
25 12-18-1009. When the investigation determines that the child can
26 safely remain at home.

27 If an investigation under this chapter determines that a child can
28 safely remain at home, the parents retain the right to keep the child at home
29 or to place the child outside the home.

30
31 12-18-1010. When a child maltreatment investigation is determined to
32 be true.

33 (a) If an investigation under this chapter is determined to be true,
34 the Department of Human Services may open a protective services case.

35 (b)(1) If the Department of Human Services opens a protective services
36 case, it shall provide services to the family in an effort to prevent

1 additional maltreatment to the child or the removal of the child from the
 2 home.

3 (2) The services shall be relevant to the needs of the family.

4 (c) If at any time during the protective services case the Department
 5 of Human Services determines that the child cannot safely remain at home, it
 6 shall take steps to remove the child under custody as outlined in this
 7 chapter or pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

8 (d) Upon request, the department shall be provided at no cost a copy
 9 of the child's public and private school records if the department has an
 10 open protective services case.

11 (e) Upon request, the department shall be provided a copy of the
 12 results of radiology procedures, videotapes, photographs, or medical records
 13 on a child if the department has an open protective services case.

14
 15 12-18-1011. When a report of child maltreatment is determined to be
 16 unsubstantiated.

17 (a) If the report of child maltreatment is unsubstantiated, the
 18 Department of Human Services may offer supportive services to the family.

19 (b) The family may accept or reject supportive services at any time.

20
 21 SECTION 2. Arkansas Code Title 12, Chapter 12, Subchapter 5 is
 22 repealed.

23 ~~12-12-501. Title and purpose.~~

24 ~~(a) This subchapter shall be known and may be cited as the "Arkansas~~
 25 ~~Child Maltreatment Act".~~

26 ~~(b) It is the purpose of this subchapter to:~~

27 ~~(1) Provide a system for the reporting of known or suspected~~
 28 ~~child maltreatment;~~

29 ~~(2) Ensure the immediate screening, safety assessment, and~~
 30 ~~prompt investigation of reports of known or suspected child maltreatment;~~

31 ~~(3) Ensure that immediate steps are taken to:~~

32 ~~(A) Protect a maltreated child and any other child under~~
 33 ~~the same care who may also be in danger of maltreatment; and~~

34 ~~(B) Place a child who is in immediate danger of severe~~
 35 ~~maltreatment in a safe environment;~~

36 ~~(4) Provide for immunity from criminal prosecution for an~~

1 individual making a good faith report of suspected child maltreatment;
 2 (5) Preserve the confidentiality of all records in order to
 3 protect the rights of the child and of the child's parents or guardians;
 4 (6) Encourage the cooperation of state law enforcement
 5 officials, courts, and state agencies in the investigation, assessment,
 6 prosecution, and treatment of child maltreatment; and
 7 (7) Stabilize the home environment if a child's health and
 8 safety are not at risk.

9
10 12-12-502. Regulations—Cooperative agreements.

11 (a) The Director of the Department of Human Services shall promulgate
12 regulations to implement the provisions of this subchapter.

13 (b)(1) The director shall initiate formal cooperative agreements with
14 law enforcement agencies, prosecuting attorneys, and other appropriate
15 agencies and individuals in order to implement a coordinated multidisciplinary
16 team approach to intervention in reports involving severe maltreatment and
17 all reports requested by the district prosecuting attorney pertaining to a
18 law enforcement or prosecutor's investigation.

19 (1) The director may enter into cooperative agreements with
20 other states to create a national child maltreatment registration system.

21 12-12-503. Definitions.

22 As used in this subchapter:

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

24 (i) Failure of a parent to:

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

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

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

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

35 (2)(A) "Abuse" means any of the following acts or omissions by a
36 parent, guardian, custodian, foster parent, person eighteen (18) years of age

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

7 ~~(i) Extreme or repeated cruelty to a juvenile;~~

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

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

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

17 ~~(v) Any nonaccidental physical injury;~~

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

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

22 ~~(b) Striking a child with a closed fist;~~

23 ~~(c) Shaking a child; or~~

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

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

27 ~~(a) Striking a child six (6) years of age or~~
28 ~~younger on the face or head;~~

29 ~~(b) Shaking a child three (3) years of age or~~
30 ~~younger;~~

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

32 ~~(d) Pinching, biting, or striking a child in~~
33 ~~the genital area;~~

34 ~~(e) Tying a child to a fixed or heavy object~~
35 ~~or binding or tying a child's limbs together;~~

36 ~~(f) Giving a child or permitting a child to~~

1 ~~consume or inhale a poisonous or noxious substance not prescribed by a~~
2 ~~physician that has the capacity to interfere with normal physiological~~
3 ~~functions;~~

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

8 ~~(1) Marijuana;~~

9 ~~(2) Alcohol, excluding alcohol given to~~
10 ~~a child during a recognized and established religious ceremony or service;~~

11 ~~(3) A narcotic; or~~

12 ~~(4) An over the counter drug if a person~~
13 ~~purposely administers an overdose to a child or purposely gives an~~
14 ~~inappropriate over the counter drug to a child and the child is detrimentally~~
15 ~~impacted by the overdose or the over the counter drug;~~

16 ~~(h) Exposing a child to a chemical that has~~
17 ~~the capacity to interfere with normal physiological functions, including, but~~
18 ~~not limited to, a chemical used or generated during the manufacture of~~
19 ~~methamphetamine; or~~

20 ~~(i) Subjecting a child to Munchausen's~~
21 ~~syndrome by proxy or a factitious illness by proxy if the incident is~~
22 ~~reported and confirmed by medical personnel or a medical facility.~~

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

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

27 ~~(C)(i) "Abuse" shall not include physical discipline of a~~
28 ~~child when it is reasonable and moderate and is inflicted by a parent or~~
29 ~~guardian for purposes of restraining or correcting the child.~~

30 ~~(ii) "Abuse" shall not include when a child suffers~~
31 ~~transient pain or minor temporary marks as the result of an appropriate~~
32 ~~restraint if:~~

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

36 ~~(b) The agency has policy and procedures~~

1 ~~regarding restraints;~~

2 ~~(c) No other alternative exists to control the~~
3 ~~child except for a restraint;~~

4 ~~(d) The child is in danger or hurting himself~~
5 ~~or herself or others;~~

6 ~~(e) The person exercising the restraint has~~
7 ~~been trained in properly restraining children, de-escalation, and conflict~~
8 ~~resolution techniques; and~~

9 ~~(f) The restraint is for a reasonable period~~
10 ~~of time.~~

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

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

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

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

29 ~~(B) Central intake shall be staffed twenty four (24) hours~~
30 ~~per day and shall have statewide accessibility through a toll-free telephone~~
31 ~~number;~~

32 ~~(5) "Child" or "juvenile" means an individual who is from birth~~
33 ~~to eighteen (18) years of age;~~

34 ~~(6) "Child maltreatment" means abuse, sexual abuse, neglect,~~
35 ~~sexual exploitation, or abandonment;~~

36 ~~(7) "Department" means the Department of Human Services;~~

1 ~~(8) “Deviate sexual activity” means any act of sexual~~
2 ~~gratification involving;~~

3 ~~(A) Penetration, however slight, of the anus or mouth of~~
4 ~~one person by the penis of another person; or~~

5 ~~(B) Penetration, however slight, of the labia majora or~~
6 ~~anus of one person by any body member or foreign instrument manipulated by~~
7 ~~another person;~~

8 ~~(9)(A)(i) “Forceful compulsion” means physical force,~~
9 ~~intimidation, or a threat, express or implied, of physical injury to or~~
10 ~~death, rape, sexual abuse, or kidnapping of any person.~~

11 ~~(ii) If the act was committed against the will of~~
12 ~~the juvenile, then forceful compulsion has been used.~~

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

18 ~~(10) “Indecent exposure” means the exposure by a person of the~~
19 ~~person’s sexual organs for the purpose of arousing or gratifying the sexual~~
20 ~~desire of the person or of any other person under circumstances in which the~~
21 ~~person knows the conduct is likely to cause affront or alarm;~~

22 ~~(11) “Near fatality” means an act that, as certified by a~~
23 ~~physician, places the child in serious or critical condition;~~

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

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

35 ~~(ii) Failure or refusal to provide necessary food,~~
36 ~~clothing, shelter, and education required by law, excluding the failure to~~

1 follow an individualized educational program, or medical treatment necessary
2 for the juvenile's well-being, except when the failure or refusal is caused
3 primarily by the financial inability of the person legally responsible and no
4 services for relief have been offered;

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

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

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

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

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

23 (B)(i) "Neglect" shall also include:

24 (a) Causing a child to be born with an illegal
25 substance present in the child's bodily fluids or bodily substances as a
26 result of the pregnant mother's knowingly using an illegal substance before
27 the birth of the child; or

28 (b) At the time of the birth of a child, the
29 presence of an illegal substance in the mother's bodily fluids or bodily
30 substances as a result of the pregnant mother's knowingly using an illegal
31 substance before the birth of the child.

32 (ii) As used in this subdivision (12)(B), "illegal
33 substance" means a drug that is prohibited to be used or possessed without a
34 prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

35 (iii) A test of the child's bodily fluids or bodily
36 substances may be used as evidence to establish neglect under subdivision

1 ~~(12)(B)(i)(a) of this section.~~

2 ~~(iv) A test of the mother's bodily fluids or bodily~~
3 ~~substances may be used as evidence to establish neglect under subdivision~~
4 ~~(12)(B)(i)(b) of this section;~~

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

9 ~~(14) "Pornography" means:~~

10 ~~(A) Pictures, movies, or videos that lack serious~~
11 ~~literary, artistic, political, or scientific value and that, when taken as a~~
12 ~~whole and applying contemporary community standards, would appear to the~~
13 ~~average person to appeal to the prurient interest;~~

14 ~~(B) Material that depicts sexual conduct in a patently~~
15 ~~offensive manner lacking serious literary, artistic, political, or scientific~~
16 ~~value; or~~

17 ~~(C) Obscene or licentious material;~~

18 ~~(15) "Serious bodily injury" means bodily injury that involves~~
19 ~~substantial risk of death, extreme physical pain, protracted and obvious~~
20 ~~disfigurement, or protracted loss or impairment of the function of a bodily~~
21 ~~member, organ, or mental faculty;~~

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

28 ~~(17) "Sexual abuse" means:~~

29 ~~(A) By a person ten (10) years of age or older to a person~~
30 ~~younger than eighteen (18) years of age;~~

31 ~~(i) Sexual intercourse, deviate sexual activity, or~~
32 ~~sexual contact by forcible compulsion;~~

33 ~~(ii) Attempted sexual intercourse, deviate sexual~~
34 ~~activity, or sexual contact by forcible compulsion;~~

35 ~~(iii) Indecent exposure; or~~

36 ~~(iv) Forcing the watching of pornography or live~~

1 ~~sexual activity;~~

2 ~~(B) By a person eighteen (18) years of age or older to a~~
3 ~~person not his or her spouse who is younger than sixteen (16) 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 ~~(C) By a sibling or caretaker to a person younger than~~
9 ~~eighteen (18) years of age;~~

10 ~~(i) Sexual intercourse, deviate sexual activity, or~~
11 ~~sexual contact; or~~

12 ~~(ii) Attempted sexual intercourse, deviate sexual~~
13 ~~activity, or sexual contact;~~

14 ~~(D) By a caretaker to a person younger than eighteen (18)~~
15 ~~years of age;~~

16 ~~(i) Forcing or encouraging the watching of~~
17 ~~pornography;~~

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

20 ~~(iii) Forcing the listening to a phone sex line; or~~

21 ~~(iv) An act of voyeurism as defined under § 5-16-~~
22 ~~102; or~~

23 ~~(E) By a person younger than ten (10) years of age to a~~
24 ~~person younger than eighteen (18) years of age;~~

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

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

29 ~~(18)(A)(i) "Sexual contact" means any act of sexual~~
30 ~~gratification involving;~~

31 ~~(a) The touching, directly or through~~
32 ~~clothing, of the sex organs, buttocks, or anus of a person or the breast of a~~
33 ~~female;~~

34 ~~(b) The encouraging of a child to touch the~~
35 ~~offender in a sexual manner; or~~

36 ~~(c) The offender requesting to touch a child~~

1 ~~in a sexual manner.~~

2 ~~(ii) Evidence of sexual gratification may be~~
 3 ~~inferred from the attendant circumstances surrounding the specific complaint~~
 4 ~~of child maltreatment.~~

5 ~~(B) However, nothing in this section shall permit normal~~
 6 ~~affectionate hugging to be construed as sexual contact;~~

7 ~~(19) "Sexual exploitation" means:~~

8 ~~(A) Allowing, permitting, or encouraging participation or~~
 9 ~~depiction of the child in:~~

10 ~~(i) Prostitution;~~

11 ~~(ii) Obscene photography;~~

12 ~~(iii) Obscene filming; or~~

13 ~~(B) Obscenely depicting, obscenely posing, or obscenely~~
 14 ~~posturing a child for any use or purpose;~~

15 ~~(20) "Subject of the report" means:~~

16 ~~(A) The offender;~~

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

19 ~~(C) The child who is the subject of suspected~~
 20 ~~maltreatment; and~~

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

24
 25 ~~12-12-504. Penalties.~~

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

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

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

36 ~~(b) Any person, official, or institution required by this subchapter~~

1 ~~to make notification of suspected child maltreatment who willfully fails to~~
2 ~~do so shall be civilly liable for damages proximately caused by that failure.~~

3 ~~(c) Any person who willfully permits, and any other person who~~
4 ~~encourages, the release of data or information contained in the central~~
5 ~~registry to persons to whom disclosure is not permitted by this subchapter~~
6 ~~shall be guilty of a Class A misdemeanor.~~

7 ~~(d) Judges or prosecuting attorneys who fail to make notification when~~
8 ~~required by this subchapter shall not be subject to any of the penalties~~
9 ~~outlined in this subchapter.~~

10
11 ~~12-12-505. Central registry.~~

12 ~~(a) There is established within the Department of Human Services a~~
13 ~~statewide central registry for the collection of records of cases involving~~
14 ~~allegations of child maltreatment that are determined to be true under this~~
15 ~~subchapter.~~

16 ~~(b)(1)(A)(i) Records of all cases in which allegations are determined~~
17 ~~to be true shall be retained by the central registry.~~

18 ~~(ii) If an offender is found guilty of, pleads~~
19 ~~guilty to, or pleads nolo contendere to an act that is the same act for which~~
20 ~~the offender is named in the central registry regardless of any subsequent~~
21 ~~expungement of the offense from the offender's criminal record, the offender~~
22 ~~shall always remain in the central registry unless the conviction is reversed~~
23 ~~or vacated.~~

24 ~~(iii)(a) The department shall identify in its policy~~
25 ~~and procedures manual the types of child maltreatment that will automatically~~
26 ~~result in the removal of the name of an offender from the central registry.~~

27 ~~(b) If an offender has been entered into the~~
28 ~~central registry as an offender for the named types of child maltreatment~~
29 ~~identified under subdivision (b)(1)(A)(iii)(a) of this section, the~~
30 ~~offender's name shall be removed from the central registry on reports of this~~
31 ~~type of child maltreatment if the offender has not had a subsequent true~~
32 ~~report of this type for one (1) year and more than one (1) year has passed~~
33 ~~since the closure of any protective services or foster care case opened as~~
34 ~~the result of this report.~~

35 ~~(iv)(a) The department shall identify in its policy~~
36 ~~and procedures manual the types of child maltreatment for which an offender~~

1 ~~can request that the offender's name be removed from the central registry.~~

2 ~~(b) If an offender has been entered into the~~
3 ~~central registry as an offender for the named types of child maltreatment~~
4 ~~identified under subdivision (b)(1)(A)(iv)(a) of this section, the offender~~
5 ~~may petition the department requesting that the offender's name be removed~~
6 ~~from the central registry if the offender has not had a subsequent true~~
7 ~~report of this type for five (5) years and more than five (5) years have~~
8 ~~passed since the closure of any protective services or foster care case~~
9 ~~opened as the result of this report.~~

10 ~~(c) The department shall develop policy and~~
11 ~~procedures to assist it in determining whether to remove the offender's name~~
12 ~~from the central registry.~~

13 ~~(d) If the department denies the request for~~
14 ~~removal of the name from the central registry, the offender may request an~~
15 ~~administrative hearing within thirty (30) days from receipt of the~~
16 ~~department's decision.~~

17 ~~(v) Notwithstanding the provisions of subdivisions~~
18 ~~(b)(1)(A)(i) (iv) of this section, with regard to an offender who was a~~
19 ~~juvenile at the time of the act or omission that resulted in a true finding~~
20 ~~of child maltreatment, the department shall:~~

21 ~~(a) Not remove the offender's name from the~~
22 ~~central registry if the offender was found guilty of, pleaded guilty to, or~~
23 ~~pleaded nolo contendere to a felony in circuit court as an adult for the act~~
24 ~~that is the same act for which the offender is named in the central registry~~
25 ~~unless the conviction is reversed or vacated; or~~

26 ~~(b) Remove the offender's name from the~~
27 ~~central registry if:~~

28 ~~(1) More than five (5) years have~~
29 ~~elapsed from the date of the act or omission that caused the true finding of~~
30 ~~child maltreatment and there have been no subsequent acts or omissions~~
31 ~~resulting in a true finding of child maltreatment; and~~

32 ~~(2) The offender can prove by a~~
33 ~~preponderance of the evidence that the juvenile offender has been~~
34 ~~rehabilitated.~~

35 ~~(B) Records of all cases in which allegations are~~
36 ~~determined to be unsubstantiated shall not be included in the central~~

1 registry.

2 ~~(2)(A)—Information included in the automated data system shall be~~
3 ~~retained indefinitely to assist the department in assessing future risk and~~
4 ~~safety.~~

5 ~~(B)—Hard copy records of unsubstantiated reports shall be~~
6 ~~retained no longer than eighteen (18) months for purposes of audit.~~

7 ~~(c)—The central registry may adopt such rules as may be necessary to~~
8 ~~encourage cooperation with other states in exchanging true reports and to~~
9 ~~effect a national registration system.~~

10 ~~(d)—The Director of the Department of Human Services shall adopt rules~~
11 ~~necessary to carry out this subchapter pursuant to the Arkansas~~
12 ~~Administrative Procedure Act, § 25-15-201 et seq., except that the director~~
13 ~~shall not begin the process under the Arkansas Administrative Procedure Act,~~
14 ~~§ 25-15-201 et seq., until the proposed rules have been reviewed by the House~~
15 ~~Interim Committee on Aging, Children and Youth, Legislative and Military~~
16 ~~Affairs and the Senate Interim Committee on Children and Youth.~~

17 ~~(e)(1)—The department may charge:~~

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

21 ~~(B)—A reasonable fee for reproducing copies of tapes and~~
22 ~~photographs.~~

23 ~~(2)—No fee may be charged to:~~

24 ~~(A)—A nonprofit or volunteer agency that requests searches~~
25 ~~of the investigative files; or~~

26 ~~(B)—A person who is indigent.~~

27
28 ~~12-12-506.—Disclosure of central registry data.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(ix)(a) The Division of Child Care and Early~~
31 ~~Childhood Education of the Department of Human Services and the child care~~
32 ~~facility owner or operator who requested the registry information through a~~
33 ~~signed notarized release from an individual who is a volunteer or who has~~
34 ~~applied for employment or who is currently employed by a child care facility~~
35 ~~or who is the owner or operator of a child care facility.~~

36 ~~(b) This disclosure shall be for the limited~~

1 ~~purpose of providing central registry background information and shall~~
2 ~~indicate a true finding only;~~

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

5 ~~(xi) Child fatality review panels as authorized by~~
6 ~~the department;~~

7 ~~(xii) The general public, the findings or~~
8 ~~information about the case of child abuse or neglect that has resulted in a~~
9 ~~child fatality or near fatality, but the central registry may redact any~~
10 ~~information concerning siblings, attorney-client communications, and other~~
11 ~~confidential communications;~~

12 ~~(xiii) A grand jury or court, upon a finding that~~
13 ~~information in the record is necessary for the determination of an issue~~
14 ~~before the court or grand jury;~~

15 ~~(xiv) The current foster parents of a child who is a~~
16 ~~subject of a report;~~

17 ~~(xv)(a) Individual federal and state senators and~~
18 ~~representatives in their official capacity and their staff members who agree~~
19 ~~not to allow any redisclosure of information.~~

20 ~~(b) However, no disclosure shall be made to~~
21 ~~any committee or legislative body of any information that identifies any~~
22 ~~recipient of services by name or address;~~

23 ~~(xvi) A court-appointed special advocate upon~~
24 ~~presentation of an order of appointment for a child who is a subject of a~~
25 ~~report;~~

26 ~~(xvii) The attorney ad litem of a child who is the~~
27 ~~subject of a report;~~

28 ~~(xviii)(a) An employer or volunteer agency for~~
29 ~~purposes of screening an employee, applicant, or volunteer who is or will be~~
30 ~~engaged in employment or activity with children, the elderly, individuals~~
31 ~~with disabilities, or individuals with mental illness upon submission of a~~
32 ~~signed, notarized release from the employee, applicant, or volunteer.~~

33 ~~(b) The registry shall release only the~~
34 ~~following information on founded reports to the employer or agency:~~

35 ~~(1) That the employee, applicant, or~~
36 ~~volunteer has a founded report;~~

1 ~~department shall provide a mandated reporter who made notification with~~
2 ~~information as to whether an investigation has been conducted and whether~~
3 ~~services have been offered.~~

4 ~~(g) The department may disclose the investigative determination of any~~
5 ~~offender when the offender is engaged in child related activities or~~
6 ~~employment and the department has determined that children under the care of~~
7 ~~the offender are at risk of maltreatment by the offender.~~

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

10 ~~(i) Any record of a screened out report of child maltreatment shall~~
11 ~~not be disclosed except to the prosecuting attorney and an appropriate law~~
12 ~~enforcement agency and may be used only within the department for purposes of~~
13 ~~administration of the program.~~

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

16 ~~(2) Information on a pending investigation shall be released~~
17 ~~upon request to:~~

18 ~~(A) The department;~~

19 ~~(B) Law enforcement;~~

20 ~~(C) The prosecuting attorney's office;~~

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

22 ~~(E) Any licensing or registering authority, including a~~
23 ~~school board, superintendent, or principal to the extent necessary to carry~~
24 ~~out its official responsibilities, but the information shall be maintained as~~
25 ~~confidential; and~~

26 ~~(F)(i) Individual federal and state senators and~~
27 ~~representatives and their staff members who agree not to allow any~~
28 ~~redislosure of information.~~

29 ~~(ii) However, no disclosure may be made to any~~
30 ~~committee or legislative body.~~

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

33 ~~(A) No seventy two hour hold has been exercised under this~~
34 ~~subchapter, or pleadings filed pursuant to the Arkansas Juvenile Code of~~
35 ~~1989, § 9-27-301 et seq.;~~

36 ~~(B) Written notice of intent to request release or~~

1 ~~disclosure is provided to the investigating agency at least five (5) days~~
2 ~~before the date for release or disclosure;~~

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

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

7 ~~(E) Waiting until completion of the investigation will~~
8 ~~jeopardize the health or safety of the child in the custody case;~~

9 ~~(F) A protective order is issued to prevent redisclosure~~
10 ~~of the information provided by the investigating agency or the information is~~
11 ~~released or disclosed only to the court in camera; and~~

12 ~~(G) Release or disclosure of the information will not~~
13 ~~compromise a criminal investigation.~~

14 ~~(4)(A) Information on a pending investigation may be released to~~
15 ~~or disclosed in the circuit court if the victim or offender has an open~~
16 ~~dependency neglect or family in need of services case before the circuit~~
17 ~~court in the following circumstances:~~

18 ~~(i) A petition for dependency neglect has been filed~~
19 ~~and the pending investigation is the basis in whole or part for the petition~~
20 ~~for dependency neglect;~~

21 ~~(ii) The department identifies the pending~~
22 ~~investigation in a court report that is provided to all of the parties before~~
23 ~~the hearing; or~~

24 ~~(iii) Written notice of intent to request release or~~
25 ~~disclosure is provided by a party to all other parties in the matter and to~~
26 ~~the investigating agency at least five (5) days before the date for release~~
27 ~~or disclosure.~~

28 ~~(B) The circuit court shall order release or disclosure~~
29 ~~only after:~~

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

33 ~~(ii) Determining that the information gathered thus~~
34 ~~far by the investigative agency is necessary for the determination of an~~
35 ~~issue before the court;~~

36 ~~(iii) Determining that waiting until the completion~~

1 of the investigation will jeopardize the health and safety of the child in
2 the dependency neglect or family in need of services case;

3 (iv) ~~Entering a protective order to prevent~~
4 ~~redisclosure of the information provided by the investigative agency or~~
5 ~~limiting the release or disclosure of the information to only the court in~~
6 ~~camera; and~~

7 (v) ~~Determining that releasing or disclosing the~~
8 ~~information will not compromise a criminal investigation.~~

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

12
13 12-12-507. ~~Reports of suspected abuse or neglect.~~

14 (a) ~~Any person with reasonable cause to suspect child maltreatment or~~
15 ~~that a child has died as a result of child maltreatment, or who observes a~~
16 ~~child being subjected to conditions or circumstances that would reasonably~~
17 ~~result in child maltreatment, may immediately notify the child abuse hotline.~~

18 (b)(1) ~~When any individual listed in subdivision (b)(4) of this~~
19 ~~section has reasonable cause to suspect that a child has been subjected to~~
20 ~~child maltreatment or has died as a result of child maltreatment or observes~~
21 ~~a child being subjected to conditions or circumstances that would reasonably~~
22 ~~result in child maltreatment, he or she shall immediately notify the child~~
23 ~~abuse hotline by telephone call, facsimile transmission, or online reporting.~~

24 (2) ~~The child abuse hotline shall review the information~~
25 ~~received under subdivision (b)(1) of this section to determine if the~~
26 ~~information rises to the minimum standards for investigation under this~~
27 ~~subchapter.~~

28 (3)(A) ~~Facsimile transmission and online reporting may be used~~
29 ~~in nonemergency situations by an identified reporter who provides the~~
30 ~~following contact information:~~

31 (i) ~~Name and phone number; and~~

32 (ii) ~~In the case of online reporting, the email~~
33 ~~address of the identified reporter.~~

34 (B) ~~The hotline shall provide confirmation of the receipt~~
35 ~~of a facsimile transmission via a return facsimile transmission or via online~~
36 ~~receipt.~~

1 (G)—A mandated reporter who wishes to remain anonymous
2 shall make the report through the child abuse hotline toll-free telephone
3 system.

4 (4)—The following individuals are mandated reporters under this
5 subsection:

- 6 (A)—Any child care worker or foster care worker;
7 (B)—A coroner;
8 (C)—A day care center worker;
9 (D)—A dentist;
10 (E)—A dental hygienist;
11 (F)—A domestic abuse advocate;
12 (G)—A domestic violence shelter employee;
13 (H)—A domestic violence shelter volunteer;
14 (I)—An employee of the Department of Human Services;
15 (J)—An employee working under contract for the Division of
16 Youth Services of the Department of Human Services;
17 (K)—Any foster parent;
18 (L)—A judge;
19 (M)—A law enforcement official;
20 (N)—A licensed nurse;
21 (O)—Any medical personnel who may be engaged in the
22 admission, examination, care, or treatment of persons;
23 (P)—A mental health professional;
24 (Q)—An osteopath;
25 (R)—A peace officer;
26 (S)—A physician;
27 (T)—A prosecuting attorney;
28 (U)—A resident intern;
29 (V)—A school counselor;
30 (W)—A school official;
31 (X)—A social worker;
32 (Y)—A surgeon;
33 (Z)—A teacher;
34 (AA)—A court-appointed special advocate program staff
35 member or volunteer;
36 (BB)—A juvenile intake or probation officer;

1 ~~(CC) Any clergy member, which includes a minister, priest,~~
2 ~~rabbi, accredited Christian Science practitioner, or other similar~~
3 ~~functionary of a religious organization, or an individual reasonably believed~~
4 ~~to be so by the person consulting him or her, except to the extent he or she:~~

5 ~~(i) Has acquired knowledge of suspected maltreatment~~
6 ~~through communications required to be kept confidential pursuant to the~~
7 ~~religious discipline of the relevant denomination or faith; or~~

8 ~~(ii) Received the knowledge of the suspected~~
9 ~~maltreatment from the offender in the context of a statement of admission; or~~

10 ~~(DD) An employee of a child advocacy center.~~

11 ~~(c)(1) No privilege or contract shall prevent anyone from reporting~~
12 ~~child maltreatment when he or she is a mandated reporter as required by this~~
13 ~~section.~~

14 ~~(2) No school, Head Start program, or day care facility shall~~
15 ~~prohibit an employee or a volunteer from directly reporting child~~
16 ~~maltreatment to the child abuse hotline.~~

17 ~~(3) No school, Head Start program, or day care facility shall~~
18 ~~require an employee or a volunteer to obtain permission or notify any person,~~
19 ~~including an employee or a supervisor, before reporting child maltreatment to~~
20 ~~the child abuse hotline.~~

21 ~~(d)(1) If the child abuse hotline receives notification that a client~~
22 ~~or a resident of any facility licensed or registered by the State of Arkansas~~
23 ~~has been subjected to child maltreatment while at the facility, then the~~
24 ~~Department of Human Services shall immediately notify the facility's~~
25 ~~licensing or registering authority of the child abuse hotline's receipt of~~
26 ~~initial notification of suspected maltreatment.~~

27 ~~(2) The Department of Human Services may notify a school's~~
28 ~~superintendent, principal, or a person in an equivalent position of the child~~
29 ~~abuse hotline's receipt of initial notification of suspected maltreatment if:~~

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

34 ~~(B) The Department of Human Services has determined that~~
35 ~~children under the care of the alleged offender appear to be at risk of~~
36 ~~maltreatment by the alleged offender.~~

1 ~~(3) The Department of Human Services may notify an alleged~~
2 ~~offender's employer or a person in charge of an activity of the child abuse~~
3 ~~hotline's receipt of initial notification of suspected maltreatment if:~~

4 ~~(A) The child abuse hotline receives notification that a~~
5 ~~report has been received on a person who is engaged in child-related~~
6 ~~activities or employment and that person has been named as an alleged~~
7 ~~offender; and~~

8 ~~(B) The Department of Human Services has determined that~~
9 ~~children under the care of the alleged offender appear to be at risk of~~
10 ~~maltreatment by the alleged offender.~~

11 ~~(4) The Department of Human Services shall promulgate rules that~~
12 ~~will ensure that notification required under this subsection is specifically~~
13 ~~approved by a responsible manager in the Department of Human Services before~~
14 ~~the notification is made.~~

15 ~~(e)(1) When a person, agency, corporation, or partnership then~~
16 ~~providing substitute care for any child in the custody of the Department of~~
17 ~~Human Services or a Department of Human Services employee or employee's~~
18 ~~spouse or other person residing in the home is reported as being suspected of~~
19 ~~child maltreatment, the investigation shall be conducted pursuant to~~
20 ~~procedures established by the Department of Human Services.~~

21 ~~(2)(A) Such procedures shall include referral of allegations to~~
22 ~~the Department of Arkansas State Police and any other appropriate law~~
23 ~~enforcement agency should the allegation involve severe maltreatment.~~

24 ~~(B) The Department of Arkansas State Police shall~~
25 ~~investigate the allegations.~~

26 ~~(C) The investigating agency shall immediately notify~~
27 ~~local law enforcement of all reports of severe maltreatment.~~

28 ~~(f)(1) The child abuse hotline shall accept a report when the~~
29 ~~allegations, if true, would constitute child maltreatment as defined in § 12-~~
30 ~~12-503 and so long as sufficient identifying information is provided to~~
31 ~~identify and locate the child or the family.~~

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

36 ~~(A) Throwing, kicking, burning, biting, or cutting a~~

1 child;

2 ~~(B)—Striking a child with a closed fist;~~

3 ~~(C)—Shaking a child four (4) years of age or older; or~~

4 ~~(D)—Striking a child seven (7) years of age or older on~~
5 ~~the face or on the head.~~

6 ~~(3)—The child abuse hotline shall accept a report of physical~~
7 ~~abuse if any of the following intentional or knowing acts are alleged to~~
8 ~~occur:~~

9 ~~(A)—Shaking a child three (3) years of age or younger;~~

10 ~~(B)—Striking a child six (6) years of age or younger on~~
11 ~~the face or on the head;~~

12 ~~(C)—Interfering with a child's breathing; or~~

13 ~~(D)—Pinching, biting, or striking a child in the genital~~
14 ~~area.~~

15 ~~(4)(A)—The child abuse hotline shall accept a report of physical~~
16 ~~abuse if a child suffers an injury as the result of a restraint.~~

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

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

23 ~~(i)—Within the past fourteen (14) days; and~~

24 ~~(ii)—As a result of physical abuse as described in~~
25 ~~subdivisions (f)(1)-(4) of this section.~~

26 ~~(B)—However, the report shall not be determined to be true~~
27 ~~unless the existence of the bruise is corroborated.~~

28 ~~(6)—The child abuse hotline shall accept a report of neglect as~~
29 ~~defined under § 12-12-503(12)(B) only if the reporter is one (1) of the~~
30 ~~following mandatory reporters and the reporter has reasonable cause to~~
31 ~~suspect that a child has been subjected to neglect as defined under § 12-12-~~
32 ~~503(12)(B):~~

33 ~~(A)—A licensed nurse;~~

34 ~~(B)—Any medical personnel who may be engaged in the~~
35 ~~admission, examination, care, or treatment of persons;~~

36 ~~(C)—An osteopath;~~

- 1 ~~(D) — A physician;~~
- 2 ~~(E) — A resident intern;~~
- 3 ~~(F) — A surgeon; or~~
- 4 ~~(G) — A social worker in a hospital.~~

5 ~~(7) — The child abuse hotline shall accept a report of child~~
6 ~~maltreatment naming an adult as the victim only if:~~

- 7 ~~(A) — The alleged offender is a caretaker of a child; and~~
- 8 ~~(B) — The person making the report is one (1) of the~~
9 ~~following:~~

- 10 ~~(i) — The adult victim;~~
- 11 ~~(ii) — A law enforcement officer;~~
- 12 ~~(iii) — The adult victim's counselor or therapist;~~
- 13 ~~(iv) — The alleged offender's counselor or therapist;~~
- 14 ~~or~~
- 15 ~~(v) — The alleged offender.~~

16 ~~(g)(1) — The child abuse hotline shall accept a report if the child or~~
17 ~~the child's family is present in Arkansas or the incident occurred in~~
18 ~~Arkansas.~~

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

25 ~~(3) — If the incident occurred in Arkansas and the victim,~~
26 ~~offender, or parents no longer reside in Arkansas, the child abuse hotline~~
27 ~~shall accept the report and the Arkansas investigating agency shall contact~~
28 ~~the other state and request assistance in completing the investigation,~~
29 ~~including an interview with the out-of-state subject of the report.~~

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

1 ~~state or country that may be involved.~~

2 ~~(B) The Arkansas investigating agency shall make an~~
3 ~~investigative determination and shall provide notice to the alleged offender~~
4 ~~that, if the allegation is determined to be true, the offender's name will be~~
5 ~~placed in the central registry.~~

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

9 ~~(h) The child abuse hotline shall accept telephone calls or other~~
10 ~~communications alleging that a child is dependent neglected, as defined in §~~
11 ~~9-27-303(17), and shall immediately refer this information to the Department~~
12 ~~of Human Services.~~

13
14 ~~12-12-508. Radiology procedures, photographs, and medical records.~~

15 ~~(a) Any person who is required to make notification under this~~
16 ~~subchapter may take or cause to be taken radiology procedures and photographs~~
17 ~~or compile medical records that may be probative as to the existence or~~
18 ~~extent of child maltreatment.~~

19 ~~(b) Hospitals and clinics may make videotapes that may be probative as~~
20 ~~to the existence or extent of child maltreatment.~~

21 ~~(c) The Department of Human Services or law enforcement officials~~
22 ~~shall be provided a copy of the results of radiology procedures, videotapes,~~
23 ~~photographs, or medical records upon request.~~

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

27
28 ~~12-12-509. Investigation—Examinations of children.~~

29 ~~(a)(1) The Department of Human Services shall cause an investigation~~
30 ~~to be made upon receiving initial notification of suspected child~~
31 ~~maltreatment.~~

32 ~~(2)(A) All investigations shall begin within seventy two (72)~~
33 ~~hours.~~

34 ~~(B) However, the investigation shall begin within twenty-~~
35 ~~four (24) hours if:~~

36 ~~(i) The allegation is severe maltreatment, excluding~~

1 ~~an allegation of sexual abuse if the most recent allegation of sexual abuse~~
2 ~~was more than one (1) year ago and the alleged victim does not currently have~~
3 ~~contact with the alleged offender; or~~

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

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

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

10 ~~(ii) Attorney ad litem of any foster child named as~~
11 ~~the victim or offender;~~

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

14 ~~(iv) The prosecuting attorney on an allegation of~~
15 ~~severe maltreatment.~~

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

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

24 ~~(3)(A) The prosecuting attorney may provide written notice to~~
25 ~~the Department of Human Services that the Department of Human Services does~~
26 ~~not need to provide notification of the initial maltreatment report to the~~
27 ~~prosecuting attorney's office.~~

28 ~~(B) Upon receiving the notification, the Department of~~
29 ~~Human Services shall not be required to provide notification of the initial~~
30 ~~maltreatment report to the prosecuting attorney's office.~~

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

33 ~~(A) The existence, cause, nature, and extent of the child~~
34 ~~maltreatment;~~

35 ~~(B) The existence and extent of previous injuries;~~

36 ~~(C) The identity of the person responsible for the~~

1 ~~maltreatment;~~

2 ~~(D) The names and conditions of other children in the~~
3 ~~home;~~

4 ~~(E) The circumstances of the parents or caretakers of the~~
5 ~~child;~~

6 ~~(F) The environment where the child resides;~~

7 ~~(G) The relationship of the child or children with the~~
8 ~~parents or caretakers; and~~

9 ~~(H) All other pertinent data.~~

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

12 ~~(A) The existence, cause, nature, and extent of the~~
13 ~~child's maltreatment;~~

14 ~~(B) The identity of the person responsible for the~~
15 ~~maltreatment;~~

16 ~~(C) The existence and extent of previous maltreatment~~
17 ~~perpetrated by the alleged offender;~~

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

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

26 ~~(F) All other pertinent and relevant data.~~

27 ~~(c)(1)(A) The investigation shall include interviews with the parents,~~
28 ~~both custodial and noncustodial.~~

29 ~~(B) If neither parent is the alleged offender, the~~
30 ~~investigation shall also include an interview with the alleged offender.~~

31 ~~(C) The investigation shall include an interview with any~~
32 ~~other relevant persons.~~

33 ~~(2)(A) The investigation shall include an interview with the~~
34 ~~child separate and apart from the alleged offender or any representative or~~
35 ~~attorney for the alleged offender.~~

36 ~~(B) However, if the age or abilities of the child render~~

1 an interview impossible, the investigation shall include observation of the
2 child.

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

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

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

16 ~~(2) However, this procedural requirement shall not be considered~~
17 ~~as a factor to alter the investigative determination in any judicial or~~
18 ~~administrative proceeding.~~

19 ~~(3) An investigation involving an out-of-home alleged offender~~
20 ~~that is determined to be true may be extended up to thirty (30) additional~~
21 ~~days to allow an investigator to ascertain.~~

22 ~~(A) The names and conditions of any minor children of the~~
23 ~~alleged offender;~~

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

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

29 ~~(4) No investigation shall be transferred to inactive status~~
30 ~~because an investigator is awaiting documentary evidence.~~

31
32 ~~12-12-510. Investigative powers.~~

33 ~~(a)(1) A person conducting an investigation required by this~~
34 ~~subchapter shall have the right to enter into or upon a home, school, or any~~
35 ~~other place for the purpose of conducting the investigation and interviewing~~
36 ~~or completing the investigation.~~

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

3 ~~(B) Failure to comply with this section may subject the~~
4 ~~publicly supported school, facility, or institution to a contempt sanction~~
5 ~~and reimbursement of attorney's fees.~~

6 ~~(b) If necessary access or admission is denied, the Department of~~
7 ~~Human Services may petition the proper juvenile division of circuit court for~~
8 ~~an ex parte order of investigation requiring the parent, caretaker, or~~
9 ~~persons denying access to any place where the child may be to allow entrance~~
10 ~~for the interviews, examinations, and investigations.~~

11 ~~(c) However, upon application to the court by the parents, caretaker,~~
12 ~~or persons denying access to the child showing good cause, the court may~~
13 ~~issue a written order to stay the order of investigation pending a hearing to~~
14 ~~be held within seventy two (72) hours.~~

15 ~~(d) The department shall investigate all allegations of child~~
16 ~~maltreatment without regard to the parent's practice of his or her religious~~
17 ~~beliefs and shall only consider whether the acts or omissions of the parent~~
18 ~~are abusive or neglectful as defined by the Arkansas Code.~~

19 ~~(e) The person conducting the investigation shall have the right to~~
20 ~~inspect personnel records of employees and volunteers in any place where an~~
21 ~~allegation of child maltreatment has been reported as having occurred at that~~
22 ~~place but the alleged offender is unknown.~~

23 ~~(f) The investigator shall have the discretion in the child's best~~
24 ~~interest to limit the persons allowed to be present when a child is being~~
25 ~~interviewed concerning allegations of child maltreatment.~~

26 ~~(g) Upon request by the investigating agency, any school, day care~~
27 ~~center, child care facility, residential facility, residential treatment~~
28 ~~facility, or similar institution shall provide the investigator with:~~

29 ~~(1) The name, date of birth, social security number, and last~~
30 ~~known address and phone number of any person identified as an alleged~~
31 ~~offender if the alleged maltreatment occurred at that school, center, or~~
32 ~~facility; and~~

33 ~~(2) The name and address of any witness to the alleged~~
34 ~~maltreatment if the alleged maltreatment occurred at that school, center, or~~
35 ~~facility.~~

36 ~~(h)(1) The person conducting the investigation shall have the right to~~

1 ~~obtain a criminal background check, including a fingerprint-based check in~~
2 ~~any national crime information database, on any subject of the report.~~

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

5
6 ~~12-12-511. Investigation to be closed.~~

7 ~~(a) If at any time before or during the investigation it is determined~~
8 ~~that the alleged offender is not a caretaker of any child, and the alleged~~
9 ~~victim has attained majority prior to notification, the child maltreatment~~
10 ~~investigation shall be closed notwithstanding any criminal investigation.~~

11 ~~(b)(1) Notwithstanding any provision of the Arkansas Rules of~~
12 ~~Evidence, any privilege between a minister and any person confessing to or~~
13 ~~being counseled by the minister shall not constitute grounds for excluding~~
14 ~~evidence at any dependency neglect proceeding or proceedings involving~~
15 ~~custody of a minor.~~

16 ~~(2) If at any time before or during the investigation it appears~~
17 ~~that the offender is identified and is not a caretaker of the victim child,~~
18 ~~excluding investigations of sexual abuse, the Department of Human Services~~
19 ~~shall:~~

20 ~~(A) Refer the matter to the appropriate law enforcement~~
21 ~~agency;~~

22 ~~(B) Close its investigation; and~~

23 ~~(C) Forward a copy of its findings to the appropriate law~~
24 ~~enforcement agency for that agency's further use in any criminal~~
25 ~~investigation.~~

26 ~~(3)(A) If the appropriate law enforcement agency subsequently~~
27 ~~determines that the offender is a caretaker, it shall immediately notify the~~
28 ~~department of its determination.~~

29 ~~(B) Thereupon the department shall reopen and continue its~~
30 ~~investigation in compliance with all other requirements contained in this~~
31 ~~subchapter.~~

32 ~~(c) If at any time before or during the investigation the department~~
33 ~~is unable to locate or identify the alleged offender because the alleged~~
34 ~~maltreatment occurred more than five (5) years ago or in another state, the~~
35 ~~department shall consider the report unable to be completed and placed in~~
36 ~~inactive status.~~

1
2 ~~12-12-512. Child maltreatment investigative determination—Notice of~~
3 ~~finding—Amendment and appeal.~~

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

6 ~~(1)(A)(i) Unsubstantiated.~~

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

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

11 ~~(a) The prosecutor;~~

12 ~~(b) A subject of the report;~~

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

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

18 ~~(e) Law enforcement agencies;~~

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

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

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

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

28 ~~(2)(A)(i) True.~~

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

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

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

1 entered if:

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

7 (ii) The offender is an underaged juvenile
8 aggressor; or

9 (iii) The report was founded for neglect as defined
10 in § 12-12-503(12)(B).

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

13 (a) Any legal remedies, including the
14 authority to initiate legal proceedings in a court of competent jurisdiction;
15 and

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

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

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

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

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

32 (iii) If the offender is a juvenile ten (10) years
33 of age or older, the department shall notify the legal parents or legal
34 guardians of the offender.

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

1 ~~(C) Notification to an offender who was an adult at the~~
2 ~~time of the act or omission that resulted in the finding of child~~
3 ~~maltreatment shall include the following:~~

4 ~~(i) The investigative determination, true or~~
5 ~~unsubstantiated, exclusive of the source of the notification;~~

6 ~~(ii) A statement that the person named as the~~
7 ~~offender of the true report may request an administrative hearing and the~~
8 ~~potential consequences to the person as a result of the person's name being~~
9 ~~placed on the central registry;~~

10 ~~(iii) A statement that the request must be made to~~
11 ~~the department within thirty (30) days of receipt of the service or certified~~
12 ~~mailing of the notice of determination;~~

13 ~~(iv) The name of the person making notification, the~~
14 ~~person's occupation, and where he or she can be reached; and~~

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

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

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

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

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

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

1 ~~(A)—Delays in completing the hearing that are attributable~~
2 ~~to the petitioner shall not count against the one hundred eighty day limit;~~
3 ~~and~~

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

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

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

14 ~~(iv)—Each report shall include a file marked copy of~~
15 ~~the criminal or delinquency disposition.~~

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

20 ~~(vi)—If the criminal or delinquency proceedings have~~
21 ~~reached no final outcome within twelve (12) months of the filing of the~~
22 ~~administrative appeal, the administrative appeal will be deemed waived if the~~
23 ~~petitioner fails to provide a written statement of the status of the criminal~~
24 ~~or delinquency proceedings every sixty (60) days and a disposition report~~
25 ~~within thirty (30) days of the entry of a 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 a 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 Committee on~~
7 ~~Aging, Children and Youth, Legislative and Military Affairs and the Senate~~
8 ~~Interim Committee on Children and Youth shall include a written explanation~~
9 ~~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 Human~~
16 ~~Services shall designate the sites to be used for video teleconference~~
17 ~~hearings.~~

18 ~~(2) The office shall designate sites within ten (10) miles of~~
19 ~~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 include the~~
36 ~~location designated by the office that is nearest to the petitioner's~~

1 residence.

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

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

11 ~~(B) However, if the judgment or adjudication of the court~~
12 ~~is reversed or vacated and notice of the reversal or vacation is provided to~~
13 ~~the department, the department shall set the matter for a hearing.~~~~(i)(1) The~~
14 ~~department shall notify the hearing officer and the respondent of the status~~
15 ~~of any juvenile division of circuit court proceeding involving the victim if~~
16 ~~child maltreatment at issue in the administrative hearing proceeding is also~~
17 ~~an issue in the juvenile division of circuit court proceeding.~~

18 ~~(2) Notice from the department under subdivision (i)(1) of this~~
19 ~~section shall also include whether the department exercised a seventy-two-~~
20 ~~hour hold on the victim and released the child, or if the department or~~
21 ~~division of circuit court dismissed a petition for emergency custody or~~
22 ~~dependency neglect.~~

23

24 ~~12-12-513. Requests for subpoenas—Form.~~

25 ~~(a) Requests for subpoenas shall be granted by the chief counsel of~~
26 ~~the Department of Human Services or a designee if the testimony or documents~~
27 ~~desired are considered necessary and material without being unduly~~
28 ~~repetitious of other available evidence.~~

29 ~~(b) Subpoenas issued pursuant to the authority of the chief counsel of~~
30 ~~the department shall be substantially in the following form:~~

31

32 ~~“The State of Arkansas to the Sheriff of _____ County: You are~~
33 ~~commanded to subpoena (name) _____, (address)~~
34 ~~_____, to attend a proceeding before the Department~~
35 ~~of Human Services to be held at _____ on the _____ day of~~
36 ~~_____, 20____, at _____ m., and testify and/or produce the~~

1 following books, records, or other documents, to wit: _____ in a matter of
2 (style of proceeding) _____ to be conducted under
3 the authority of _____. WITNESS my hand this _____ day of _____,
4 20____.

5
6
7
8 Chief Counsel or designee, Department of Human Services”

9
10
11
12 (c)(1) ~~Subpoenas provided for in this section shall be served in the~~
13 ~~manner as now provided by law, and returned and a copy made and kept by the~~
14 ~~department.~~

15 (2) ~~The fees and mileage for officers serving the subpoenas and~~
16 ~~witnesses answering the subpoenas shall be the same as now provided by law.~~

17 (d) ~~Witnesses duly served with subpoenas issued pursuant to the~~
18 ~~authority provided in this section who shall refuse to testify or give~~
19 ~~evidence may be cited on affidavit through application of the chief counsel~~
20 ~~of the department to the Pulaski County Circuit Court or any circuit court of~~
21 ~~the state where the subpoenas were served.~~

22 (e) ~~Failure to obey the subpoena may be deemed a contempt, punishable~~
23 ~~accordingly.~~

24
25 12-12-514. ~~Child maltreatment investigative report.~~

26 (a) ~~The agency responsible for the investigation shall make a complete~~
27 ~~written report of the investigation by the conclusion of the thirty-day time~~
28 ~~period set forth in § 12-12-509(d) of this subchapter.~~

29 (b) ~~The report shall include the following information:~~

30 (1) ~~The names and addresses of the child and his or her legal~~
31 ~~parents and other caretakers of the child, if known;~~

32 (2) ~~The child's age, sex, and race;~~

33 (3) ~~The nature and extent of the child's present and past~~
34 ~~injuries;~~

35 (4) ~~The investigative determination;~~

36 (5) ~~The nature and extent of the child maltreatment, including~~

1 ~~any evidence of previous injuries or child maltreatment to the child or his~~
2 ~~or her siblings;~~

3 ~~(6) The name and address of the person responsible for the~~
4 ~~injuries or child maltreatment, if known;~~

5 ~~(7) Services offered and accepted;~~

6 ~~(8) Family composition;~~

7 ~~(9) The source of the notification; and~~

8 ~~(10) The person making the notification, his or her occupation,~~
9 ~~and where he or she can be reached.~~

10 ~~(c)(1)(A) A copy of the written report and any supporting~~
11 ~~documentation, including statements from witnesses and transcripts of~~
12 ~~interviews, shall immediately be filed at no cost with the central registry.~~

13 ~~(B) All information gathered during the course of the~~
14 ~~investigation shall be contained in the file of the Department of Human~~
15 ~~Services whether or not the information supports the investigative~~
16 ~~determination.~~

17 ~~(2)(A) Notification of the investigative determination shall be~~
18 ~~provided to the appropriate law enforcement agency and prosecuting attorney's~~
19 ~~office regarding reports of severe maltreatment.~~

20 ~~(B) Notification of the investigative determination shall~~
21 ~~be provided to any appropriate licensing or registering authorities.~~

22 ~~(3) If the investigative determination is true and the victim or~~
23 ~~offender is in foster care, notification of the investigative determination~~
24 ~~shall be provided to the juvenile division of circuit court, the juvenile~~
25 ~~division court-appointed attorneys ad litem of the victim and offender,~~
26 ~~court-appointed special advocates if appointed in an open dependency neglect~~
27 ~~case, and the legal parents of the victim or offender who is in foster care.~~

28 ~~(d) Notwithstanding any provision of this subchapter, the department~~
29 ~~shall forward the investigative determination, exclusive of the source of the~~
30 ~~notification, the name of the person making notification, the person's~~
31 ~~occupation, and where he or she can be reached, to the parents and alleged~~
32 ~~offender by a process server or by certified mail, restricted delivery,~~
33 ~~addressed to the recipient's last known address.~~

34 ~~(e) The report, exclusive of information identifying the person making~~
35 ~~the notification, shall be admissible in evidence in any proceeding related~~
36 ~~to child maltreatment.~~

1
2 ~~12-12-515.—Provision of information to person or agency making initial~~
3 ~~notification of suspected maltreatment.~~

4 ~~:(a)(1)—If the person or agency making the initial notification of~~
5 ~~suspected child maltreatment is required to do so by this subchapter, the~~
6 ~~Department of Human Services, within ten (10) business days of the child~~
7 ~~maltreatment investigative determination, shall provide to the person the~~
8 ~~following information:~~

9 ~~(A)—The investigative determination; and~~

10 ~~(B)—Services offered and provided.~~

11 ~~(2)(A)—The department shall provide the local educational~~
12 ~~agency, specifically the school counselor where the maltreated child attends~~
13 ~~school, a report including the name and relationship of the offender to the~~
14 ~~maltreated child and indicating the department's founded investigative~~
15 ~~determination regarding the child and the services offered or provided by the~~
16 ~~department to the child.~~

17 ~~(B)—The department shall also provide the local~~
18 ~~educational agency, specifically the school counselor, a report indicating~~
19 ~~the department's founded investigative determination on any juvenile age ten~~
20 ~~(10) or older who is named as the offender in a true report and the services~~
21 ~~offered or provided by the department to the juvenile offender.~~

22 ~~(3)—Any local educational agency receiving such information from~~
23 ~~the department shall make this information, if it is a true report,~~
24 ~~confidential and a part of the child's permanent educational record and shall~~
25 ~~treat such information as educational records are treated under the Family~~
26 ~~Educational Rights and Privacy Act, 20 U.S.C. § 1232g.~~

27 ~~(b)(1)—The department may provide information to a person or agency~~
28 ~~that provides services such as medical examination of, an assessment~~
29 ~~interview with, or diagnosing, caring for, treating, or supervising a victim~~
30 ~~of maltreatment, a juvenile offender, or an underaged juvenile aggressor.~~

31 ~~(2)—This information may include:~~

32 ~~(A)—The investigative determination or the investigation~~
33 ~~report; and~~

34 ~~(B)—The services offered and provided.~~

35
36 ~~12-12-516.—Protective custody of children.~~

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

9 ~~(A) Child is subjected to neglect as defined under § 12-~~
10 ~~12-503(12)(B) and the department assesses the family and determines that the~~
11 ~~newborn and any other children, including siblings, under the custody or care~~
12 ~~of the mother are at substantial risk of serious harm such that the children~~
13 ~~need to be removed from the custody or care of the mother;~~

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

16 ~~(C) Circumstances or conditions of the child are such that~~
17 ~~continuing in his or her place of residence or in the care and custody of the~~
18 ~~parent, guardian, custodian, or caretaker presents an immediate danger of~~
19 ~~severe maltreatment.~~

20 ~~(2) However, such custody shall not exceed seventy two (72)~~
21 ~~hours except in the event that the expiration of seventy two (72) hours falls~~
22 ~~on a weekend or holiday, in which case protective custody may be extended~~
23 ~~through the next business day following the weekend or holiday.~~

24 ~~(3) A sheriff or chief of police may place a child in a~~
25 ~~department foster home if:~~

26 ~~(A) The sheriff or chief of police contacts the on-call~~
27 ~~worker for the department and does not get a return phone call within thirty~~
28 ~~(30) minutes;~~

29 ~~(B) The sheriff or chief of police contacts the~~
30 ~~department Emergency Notification Line and does not get a return phone call~~
31 ~~within fifteen (15) minutes;~~

32 ~~(C) The foster parent is personally well known to the~~
33 ~~sheriff or the chief of police;~~

34 ~~(D) The sheriff or chief of police has:~~

35 ~~(i) Determined that the foster parent's home is safe~~
36 ~~and provides adequate accommodations for the child; and~~

1 ~~(ii) Performed a criminal record and child~~
2 ~~maltreatment check on the foster parent as required under § 9-28-409; and~~

3 ~~(E) On the next business day, the sheriff or chief of~~
4 ~~police immediately notifies the department of the time and date that the~~
5 ~~child was placed in the foster parent's home.~~

6 ~~(b) The individual taking the child into protective custody may give~~
7 ~~effective consent for medical, dental, health, and hospital services during~~
8 ~~protective custody.~~

9 ~~(c) In any case in which protective custody is invoked, the individual~~
10 ~~taking the child into protective custody shall notify the department in order~~
11 ~~that a child protective proceeding may be initiated within the time specified~~
12 ~~in this section.~~

13 ~~(d) The department or prosecuting attorney may file a petition in the~~
14 ~~appropriate court seeking imposition of penalties for violation of this~~
15 ~~subchapter.~~

16 ~~(e) A school, residential facility, hospital, and any other place that~~
17 ~~a child may be located shall not require a written court order for the~~
18 ~~department to take a seventy-two hour hold under this section or § 9-27-313.~~

19
20 ~~12-12-517. Liability.~~

21 ~~(a) Any person or agency required to participate and acting in good~~
22 ~~faith in making notification, the taking of a photograph or radiological~~
23 ~~test, or the removal of a child while exercising protective services shall be~~
24 ~~immune to suit and to liability, both civil and criminal.~~

25 ~~(b) If acting in good faith, all persons making notification not named~~
26 ~~in this section shall be immune from liability.~~

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

29
30 ~~12-12-518. Privileged communications as evidence — Exception.~~

31 ~~(a) It is the public policy of the State of Arkansas to protect the~~
32 ~~health, safety, and the welfare of minors within the state.~~

33 ~~(b)(1) No privilege, except that between a lawyer and client or~~
34 ~~between a minister, including a Christian Science practitioner, and any~~
35 ~~person confessing to or being counseled by the minister, shall prevent anyone~~
36 ~~from testifying concerning child maltreatment.~~

1 ~~(2) When any physician, psychologist, psychiatrist, or licensed~~
2 ~~counselor or therapist conducts interviews with or provides therapy to any~~
3 ~~subject of a report of suspected child maltreatment for purposes related to~~
4 ~~child maltreatment, the physician, psychologist, psychiatrist, or licensed~~
5 ~~counselor or therapist shall be deemed to be performing services on behalf of~~
6 ~~the child.~~

7 ~~(3) Adult subjects of a report of suspected child maltreatment~~
8 ~~cannot invoke privilege on the child's behalf.~~

9 ~~(4) Transcripts of testimony introduced in a child maltreatment~~
10 ~~proceeding pursuant to this section shall not be received into evidence in~~
11 ~~any other civil or criminal proceeding.~~

12
13 ~~12-12-519. Custody of children and services to families.~~

14 ~~(a)(1) During the course of any child maltreatment investigation,~~
15 ~~whether conducted by the Department of Human Services, the Department of~~
16 ~~Arkansas State Police, or local law enforcement, the Department of Human~~
17 ~~Services shall assess whether or not the child can safely remain in the home.~~

18 ~~(2) The child's health and safety shall be the paramount concern~~
19 ~~in determining whether or not to remove a child from the custody of his or~~
20 ~~her parents.~~

21 ~~(b)(1)(A) If an investigation determines that the child cannot safely~~
22 ~~remain at home, the Department of Human Services shall take steps to remove~~
23 ~~the child under protective custody as outlined in § 12-12-516 or pursuant to~~
24 ~~the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.~~

25 ~~(B) After the Department of Human Services has removed the~~
26 ~~child, the child shall be placed in a licensed or approved foster home,~~
27 ~~shelter, or facility, or an exempt child welfare agency as defined at § 9-28-~~
28 ~~402(12).~~

29 ~~(C) No one, including the family, the Department of Human~~
30 ~~Services, the Department of Arkansas State Police, or local law enforcement~~
31 ~~shall allow the child to be placed in a nonapproved or nonlicensed foster~~
32 ~~home, shelter, or facility.~~

33 ~~(2) If an investigation determines that the child can safely~~
34 ~~remain at home, the parents retain the right to keep the child at home or to~~
35 ~~place the child outside the home.~~

36 ~~(c)(1) If the child maltreatment investigation is determined to be~~

1 ~~true, the Department of Human Services may open a protective services case.~~

2 ~~(2) If the Department of Human Services opens a case, it shall~~
3 ~~provide services to the family in an effort to prevent additional~~
4 ~~maltreatment to the child or the removal of the child from the home.~~

5 ~~(3) The services shall be relevant to the needs of the family.~~

6 ~~(4) If at any time during the protective services case the~~
7 ~~Department of Human Services determines that the child cannot safely remain~~
8 ~~at home, it shall take steps to remove the child under protective custody as~~
9 ~~outlined in § 12-12-516 or pursuant to the Arkansas Juvenile Code of 1989, §~~
10 ~~9-27-301 et seq.~~

11 ~~(d)(1) If the report of child maltreatment is unsubstantiated, the~~
12 ~~Department of Human Services may offer supportive services to a family.~~

13 ~~(2) The family may accept or reject supportive services at any~~
14 ~~time.~~

15 ~~(3) Any family may request supportive services from the~~
16 ~~Department of Human Services.~~

17 ~~(4) Supportive services shall be offered for the purpose of~~
18 ~~preventing child maltreatment.~~

19 */s/ Madison*

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