

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Senator J. Dismang

A Bill

SENATE BILL 1005

For An Act To Be Entitled

8 AN ACT TO ENSURE THE CONFIDENTIALITY OF RECORDS FROM
9 A SUSPECTED CASE OF CHILD ABUSE OR NEGLECT KEPT BY A
10 CHILD ADVOCACY CENTER, A HOSPITAL, OR A CLINIC
11 INVOLVING A SUSPECTED CASE OF CHILD ABUSE OR NEGLECT;
12 TO ENSURE THAT CERTAIN IMAGES OF A CHILD ARE EXEMPT
13 FROM THE RECORDS SUBJECT TO RELEASE IN A SUSPECTED
14 CASE OF CHILD ABUSE OR NEGLECT; AND FOR OTHER
15 PURPOSES.

Subtitle

18 TO ENSURE THE CONFIDENTIALITY OF RECORDS
19 KEPT BY A SUSPECTED CASE OF CHILD ABUSE
20 OR NEGLECT FROM A CHILD ADVOCACY CENTER,
21 A HOSPITAL, OR A CLINIC INVOLVING A
22 SUSPECTED CASE OF CHILD ABUSE OR NEGLECT.

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 20-78-106 is amended to read as follows:
29 20-78-106. Availability of records ~~of~~ from children's advocacy
30 centers, hospitals, or clinics in suspected cases of child abuse or neglect.

31 (a) Reports, correspondence, memoranda, case histories, medical
32 records, or other materials compiled or gathered during a suspected case of
33 child abuse or neglect by a children's advocacy ~~centers performing the~~
34 ~~services described in § 20-78-105~~ center, hospital, or clinic shall be
35 confidential and shall not be released or otherwise made available except:

36 (1) ~~Medical records may be released to~~ To the attorney



1 representing the abused child in a custody or juvenile case with an order of
2 appointment;

3 (2) For any audit or similar activity conducted with the
4 administration of any plan or program by any governmental agency which is
5 authorized by law to conduct the audit or activity;

6 (3) To law enforcement agencies, a prosecuting attorney, or the
7 Attorney General;

8 (4) To any licensing or registering authority to the extent
9 necessary to carry out its official responsibilities, but the information
10 shall be maintained as confidential;

11 (5) To a grand jury or court upon a finding that:

12 (A) Information in the record is necessary for the
13 determination of a civil, criminal, or administrative issue before the court
14 or grand jury; and

15 (B) The information cannot be obtained from a person or
16 entity described in subdivision (b)(2) of this section;

17 (6) To the Department of Human Services;

18 (7) To a court-appointed special advocate volunteer with a valid
19 court order; and

20 (8) Images of a child's breast, genitals, or anus are not
21 considered part of the record in subsection (a) of this section and are
22 restricted as provided under this section.

23 (9) All records may be released to an attorney in any criminal,
24 civil, or administrative proceeding or to a party in a criminal, civil, or
25 administrative proceeding if the party is not represented by an attorney as
26 permitted under criminal, civil, or administrative discovery rules upon a
27 finding by the court that:

28 (A) Information in the record is necessary for the
29 determination of a criminal, civil, or administrative issue before a court or
30 grand jury; and

31 (B) The information cannot be obtained from a person or
32 entity described in subdivision (b)(2) of this section; and

33 ~~(9)~~(10) Medical records, excluding images of a child's breast,
34 genitals, or anus may be released to a person providing medical or
35 psychiatric care or services to the abused child.

36 (b)(1) Except as provided in subdivision (b)(2) of this section, no

1 person or agency to whom disclosure is made may disclose to any other person
2 reports or other information obtained under this section.

3 (2) Law enforcement agencies, a prosecuting attorney, the
4 department, a court of competent jurisdiction, or the Attorney General may
5 release reports or information obtained under this section. However, any
6 report or information released under this subsection shall remain
7 confidential.

8 (c)(1) Nothing in this section shall deny or diminish the right of an
9 attorney for a party or a party to a criminal, civil, or administrative
10 proceeding to receive discovery as provided in this section in order for the
11 attorney or party to:

- 12 (A) Prepare for trial;
- 13 (B) File appropriate pleadings; or
- 14 (C) Present evidence in court.

15 (2)(A) The circuit court shall issue protective orders under the
16 Arkansas Rules of Criminal Procedure or Arkansas Rules of Civil Procedure, as
17 applicable, to ensure that those items of evidence for which there is a
18 reasonable expectation of privacy are not distributed to persons or
19 institutions without a legitimate interest in the evidence and otherwise
20 should be sealed. There is a reasonable expectation of privacy in the
21 following items:

- 22 (i) Audio or videotapes of a child witness; and
- 23 (ii) ~~Photographs of a child witness;~~
- 24 ~~(iii) Name of a child victim; and~~
- 25 ~~(iv) Medical records of a child victim~~ Images of a
26 child's breast, genitals, or anus.

27 (B) The administrative hearing officer or administrative
28 law judge shall issue protective orders to ensure that those items of
29 evidence for which there is a reasonable expectation of privacy are not
30 distributed to persons or institutions without a legitimate interest in the
31 evidence and otherwise should be sealed. There is a reasonable expectation of
32 privacy in the following items:

- 33 (i) Audio or videotapes of a child witness; and
- 34 (ii) ~~Photographs of a child witness;~~
- 35 ~~(iii) Name of a child victim; and~~
- 36 ~~(iv) Medical records of a child victim~~ Images of a

1 child's breast, genitals, or anus.

2 (C)(i) The circuit court may enforce the orders with
3 criminal or civil contempt or sanctions, as appropriate.

4 (ii) The circuit court may modify or vacate a
5 protective order for good cause.

6 (iii) If a protective order was entered and has not
7 been vacated, the remedy for a violation of the protective order is limited
8 to criminal or civil contempt or sanctions by the circuit court in which the
9 protective order was entered.

10 (d) Except for purposes of enforcement concerning violations of a
11 protective order under subsection (c) of this section, disclosure of
12 information in violation of this section is a Class A misdemeanor.

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