

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 809

5 By: Senator J. Woods
6 By: Representative M. Gray
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH DUAL AUTHORITY AND RESPONSIBILITY
10 OVER THE CHILD MALTREATMENT ACT FOR THE DEPARTMENT OF
11 HUMAN SERVICES AND THE ARKANSAS DEPARTMENT OF STATE
12 POLICE; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO ESTABLISH DUAL AUTHORITY AND
16 RESPONSIBILITY OVER THE CHILD
17 MALTREATMENT ACT FOR THE DEPARTMENT OF
18 HUMAN SERVICES AND THE ARKANSAS
19 DEPARTMENT OF STATE POLICE.
20
21
22

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

25 SECTION 1. Arkansas Code § 12-18-103(8), concerning definitions for
26 the Child Maltreatment Act, is amended to read as follows:

27 (8) "Department" means the Department of Human Services and the
28 Department of Arkansas of Arkansas State Police;
29

30 SECTION 2. Arkansas Code § 12-18-104(b), concerning the
31 confidentiality of information reported under the Child Maltreatment Act, is
32 amended to read as follows:

33 (b) Any data, records, reports, or documents released under this
34 chapter to law enforcement, a prosecuting attorney, or a court by the
35 ~~Department of Human Services~~ department are confidential and shall be sealed
36 and not re-disclosed without a protective order to ensure the items of



1 evidence for which there is a reasonable expectation of privacy are not
2 distributed to a person or institution without a legitimate interest in the
3 evidence, provided that nothing in this chapter is deemed to abrogate the
4 right of discovery in a criminal case under the Arkansas Rules of Criminal
5 Procedure or the law.

6
7 SECTION 3. Arkansas Code §§ 12-18-105 and 12-18-106 are amended to
8 read as follows:

9 12-18-105. Rules.

10 The ~~Director of the~~ Department of Human Services and the Department of
11 Arkansas of Arkansas State Police shall promulgate rules to implement this
12 chapter.

13
14 12-18-106. Cooperative agreements.

15 (a) The ~~Director of the~~ Department of Human Services and the
16 Department of Arkansas of Arkansas State Police shall implement a coordinated
17 multidisciplinary team approach to intervention in reports involving severe
18 maltreatment and all reports requested by a prosecuting attorney pertaining
19 to a law enforcement or prosecuting attorney’s investigation by initiating
20 formal cooperative agreements with:

- 21 (1) Law enforcement agencies;
- 22 (2) Prosecuting attorneys; and
- 23 (3) Other appropriate agencies and individuals.

24 (b) The ~~director~~ department may enter into cooperative agreements with
25 other states to create a national child maltreatment registration system.

26
27 SECTION 4. Arkansas Code § 12-18-209 is amended to read as follows:
28 12-18-209. Imposition of penalties.

29 The Department of Human Services and the Department of Arkansas of
30 Arkansas State Police or a prosecuting attorney may file a petition in the
31 appropriate court seeking imposition of penalties for violation of this
32 chapter.

33
34 SECTION 5. Arkansas Code § 12-18-301(b), concerning the creation of
35 the Child Abuse Hotline, is amended to read as follows:

36 (b) The Child Abuse Hotline is a unit established within the

1 Department of Human Services and the Department of Arkansas of Arkansas State
2 Police or its designee with the purpose of receiving and recording
3 notifications and reports under this chapter.

4
5 SECTION 6. Arkansas Code § 12-18-502(a)(1), concerning the release and
6 disclosure of data generally from the Child Abuse Hotline, is amended to read
7 as follows:

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

14
15 SECTION 7. Arkansas Code § 12-18-504(a), concerning notification in
16 cases of reports of severe maltreatment, is amended to read as follows:

17 (a) The Department of Human Services and the Department of Arkansas of
18 Arkansas State Police shall immediately notify local law enforcement of all
19 reports of severe maltreatment.

20
21 SECTION 8. Arkansas Code § 12-18-507(a), concerning notice when the
22 alleged victim is a resident of a facility licensed, registered, or operated
23 by the state, is amended to read as follows:

24 (a) If the Child Abuse Hotline receives a report that a client or a
25 resident of a facility licensed or registered by the State of Arkansas has
26 been subjected to child maltreatment while at the facility, the Department of
27 Human Services and the Department of Arkansas of Arkansas State Police shall
28 immediately notify the facility director and the facility's licensing or
29 registering authority of the Child Abuse Hotline's receipt of a report of
30 suspected child maltreatment.

31
32 SECTION 9. Arkansas Code § 12-18-601(d), concerning assignment of a
33 child maltreatment case to an investigative agency, is amended to read as
34 follows:

35 (d)(1) The Department of Human Services and the Department of Arkansas
36 of Arkansas State Police may develop and implement triage procedures for

1 accepting and documenting reports of child maltreatment of a child not at
2 risk of imminent harm if an appropriate referral is made to a community
3 organization or voluntary preventive service.

4 (2) The Department of Human Services and the Department of
5 Arkansas of Arkansas State Police shall not implement this section until
6 rules necessary to carry out this subsection have been promulgated pursuant
7 to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

8
9 SECTION 10. Arkansas Code § 12-18-602(a), concerning the initiation of
10 an investigation of child maltreatment, is amended to read as follows:

11 (a)~~(1)~~ The Department of Human Services and the Department of Arkansas
12 of Arkansas State Police shall cause an investigation to be made upon
13 receiving initial notification of suspected child maltreatment.

14
15 SECTION 11. Arkansas Code § 12-18-604(b), concerning services during
16 an investigation of child maltreatment, is amended to read as follows:

17 (b)(1) The Department of Human Services and the Department of Arkansas
18 of Arkansas State Police may petition a circuit court to allow an
19 investigator to access the controlled substance database.

20 (2) The court may grant a petition under this subsection if the
21 Department of Human Services and the Department of Arkansas of Arkansas State
22 Police demonstrated probable cause that:

- 23 (A) The person has one (1) or more prescription drugs; and
- 24 (B) The baby or the person tested positive for
25 prescription drugs at the time of the birth of the baby.

26
27 SECTION 12. Arkansas Code § 12-18-609(c)(1), concerning the right to
28 enter for the purposes of a child maltreatment investigation, is amended to
29 read as follows:

30 (c)(1) If necessary access or admission is denied to a person
31 conducting an investigation under this chapter, the Department of Human
32 Services and the Department of Arkansas of Arkansas State Police may petition
33 the proper juvenile division of circuit court for an ex parte order of
34 investigation requiring the parent, caretaker, or persons denying access to
35 any place where the child may be to allow entrance for the interviews,
36 examinations, and investigations.

1
2 SECTION 13. Arkansas Code § 12-18-612(b), concerning criminal
3 background checks, is amended to read as follows:

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

7
8 SECTION 14. Arkansas Code § 12-18-615(b) and (c), concerning radiology
9 procedures, photographs, electronic media, and medical records, is amended to
10 read as follows:

11 (b) A hospital, clinic, child safety center, or the Department of
12 Human Services and the Department of Arkansas of Arkansas State Police may
13 make electronic media that may be relevant as to the existence or extent of
14 child maltreatment.

15 (c) ~~The Department of Human Services~~ department or law enforcement
16 officials shall be provided at no cost a copy of the results of radiology
17 procedures, electronic media, photographs, or medical records upon request.

18
19 SECTION 15. Arkansas Code § 12-18-616(a)(1), concerning the timing of
20 investigative determinations, is amended to read as follows:

21 (a)(1) Except as otherwise provided in this section, an investigative
22 determination shall be made in each investigation under this chapter within
23 forty-five (45) days regardless of whether the investigation is conducted by
24 the Department of Human Services, ~~the Crimes Against Children Division of the~~
25 ~~Department of Arkansas State Police,~~ and the Department of Arkansas of
26 Arkansas State Police or local law enforcement.

27
28 SECTION 16. Arkansas Code § 12-18-618 is amended to read as follows:

29 12-18-618. Religious bias prohibited.

30 The Department of Human Services and the Department of Arkansas of
31 Arkansas State Police shall investigate all allegations of child maltreatment
32 without regard to the parent's practice of his or her religious beliefs and
33 shall only consider whether the acts or omissions of the parent constitute
34 child maltreatment under this chapter.

35
36 SECTION 17. Arkansas Code § 12-18-619(b)(1), concerning closing child

1 maltreatment investigations, is amended to read as follows:

2 (b)(1) If at any time before or during the investigation it appears
3 that the alleged offender is identified and is not a caretaker of the victim
4 child, excluding investigations of sexual abuse, the Department of Human
5 Services and the Department of Arkansas of Arkansas State shall:

- 6 (A) Refer the matter to the appropriate law enforcement agency;
- 7 (B) Close its investigation; and
- 8 (C) Forward a copy of its findings to the appropriate law
9 enforcement agency for the agency’s further use in any criminal
10 investigation.

11

12 SECTION 18. Arkansas Code § 12-18-702 is amended to read as follows:
13 12-18-702. Investigative determination.

14 Upon completion of an investigation under this chapter, the Department
15 of Human Services and the Department of Arkansas of Arkansas State shall
16 determine whether the allegations of child maltreatment are:

- 17 (1)(A) Unsubstantiated.
- 18 (B) An unsubstantiated determination shall be entered when
19 the allegation is not supported by a preponderance of the evidence;

- 20 (2)(A) True.
- 21 (B) A true determination shall be entered when the
22 allegation is supported by a preponderance of the evidence.

- 23 (C) A determination of true but exempted, which means that
24 the offender’s name shall not be placed in the Child Maltreatment Central
25 Registry, shall be entered if:

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

31 (ii) The offender is an underaged juvenile offender;
32 (iii) The report was true for neglect as defined
33 under § 12-18-103(13)(B); or

34 (iv) The offender is a juvenile less than fourteen
35 (14) years of age; or

- 36 (3)(A) Inactive.

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

3
4 SECTION 19. Arkansas Code § 12-18-703(a), concerning notice to alleged
5 offenders of the child maltreatment act, is amended to read as follows:

6 (a) The Department of Human Services and the Department of Arkansas of
7 Arkansas State shall notify each alleged offender of the child maltreatment
8 investigative determination whether true or unsubstantiated.

9
10 SECTION 20. Arkansas Code § 12-18-704 is amended to read as follows:
11 12-18-704. Notice if the investigative determination is true but
12 exempted and the alleged offender is a child.

13 If the investigative determination of the report was determined true
14 but exempted under § 12-18-702(2)(C)(ii) and the alleged offender is a child
15 at the time the act or omission occurred, the Department of Human Services
16 and the Department of Arkansas of Arkansas shall notify the legal parents and
17 legal guardians of the investigative determination and that the child’s name
18 shall not be placed in the Child Maltreatment Central Registry, and the
19 alleged offender may petition for an administrative hearing.

20
21 SECTION 21. Arkansas Code § 12-18-705(b), concerning notice if a
22 alleged child maltreatment offender is at least fourteen years of age and
23 less than eighteen years of age, is amended to read as follows:

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

25 (1) If the alleged offender is in foster care, the Department of
26 Human Services and the Department of Arkansas of Arkansas shall notify the
27 alleged offender’s counsel and the legal parents, legal guardians, and
28 current foster parents of the alleged offender; or

29 (2) If the alleged offender is not in foster care, the
30 department shall notify the legal parents and legal guardians of the alleged
31 offender.

32
33 SECTION 22. Arkansas Code § 12-18-708(a), concerning miscellaneous
34 notice requirements, is amended to read as follows:

35 (a) The Department of Human Services and the Department of Arkansas of
36 Arkansas shall confirm an investigative determination upon request from the

1 following:

- 2 (1) The responsible multidisciplinary team;
- 3 (2) The juvenile division of circuit court if the victim or
4 offender has an open dependency-neglect or family in need of services case;
- 5 (3) The attorney ad litem for any child who is named as the
6 victim or offender;
- 7 (4) The court-appointed special advocate for any child named as
8 the alleged victim or offender;
- 9 (5) Any licensing or registering authority to the extent
10 necessary to carry out its official responsibilities;
- 11 (6) Any department division director or facility director
12 receiving notice of a Child Abuse Hotline report under this chapter;
- 13 (7) Any facility director receiving notice of a Child Abuse
14 Hotline report under this chapter;
- 15 (8) The attorney ad litem and court-appointed special advocate
16 volunteer of all other children in the same foster home if the child
17 maltreatment occurred in a foster home; and
- 18 (9) The attorney ad litem and court-appointed special advocate
19 volunteer for any child in foster care when the alleged juvenile offender or
20 underaged juvenile offender is placed in the same placement as the attorney
21 ad litem or court-appointed special advocate's client.

22

23 SECTION 23. Arkansas Code § 12-18-709(b)(1), concerning
24 confidentiality of child maltreatment reports, is amended to read as follows:

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

31

32 SECTION 24. Arkansas Code § 12-18-712(b), concerning mental health
33 services for alleged sex offenders under eighteen (18) years of age and the
34 victim, is amended to read as follows:

35 (b) The Department of Human Services and the Department of Arkansas of
36 Arkansas shall:

1 (1) Provide the parents or legal guardians of the alleged sex
2 offender and the victim with a list of the mental health professionals or
3 agencies available to evaluate and treat the alleged sex offender and the
4 victim, if necessary; and

5 (2) Assist the parents or legal guardians of the alleged sex
6 offender and the victim with a referral for a mental health evaluation, if
7 necessary.

8
9 SECTION 25. Arkansas Code § 12-18-808(a), concerning notice of
10 juvenile division circuit court proceedings, is amended to read as follows:

11 (a) The Department of Human Services and the Department of Arkansas of
12 Arkansas shall notify the administrative law judge and the petitioner of the
13 status of any juvenile division of circuit court proceeding involving the
14 victim if child maltreatment at issue in the administrative hearing
15 proceeding is also an issue in the juvenile division of circuit court
16 proceeding.

17
18 SECTION 26. Arkansas Code § 12-18-810(b), concerning the authority to
19 amend investigative determinations based on evidence, is amended to read as
20 follows:

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

26 (2) However, an amendment of the investigative determination
27 shall not be done after the conclusion of the hearing.

28
29 SECTION 27. Arkansas Code § 12-18-811(a)(1), concerning expedited
30 administrative hearings, is amended to read as follows:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 28. Arkansas Code § 12-18-812(a), concerning preliminary administrative hearings, is amended to read as follows:

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

SECTION 29. Arkansas Code § 12-18-813(b)(1), concerning notice of investigative determinations upon satisfaction of due process, is amended to read as follows:

(b)(1) Upon satisfaction of due process and if the investigative determination is true, the Department of Human Services and the Department of Arkansas of Arkansas shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the department to the child.

SECTION 30. Arkansas Code § 12-18-909(b)(1), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(b)(1) The Department of Human Services and the Department of Arkansas of Arkansas may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tables, video tapes, compact discs, DVDs, and photographs.

SECTION 31. Arkansas Code § 12-18-909(d)(3), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the

1 Department of Human Services and the Department of Arkansas of Arkansas when
2 a child transfers from one (1) local educational agency to another and shall
3 notify the department of the child's new school and address, if known.

4
5 SECTION 32. Arkansas Code § 12-18-909(e)(1), concerning the
6 availability of true reports of child maltreatment from the central registry,
7 is amended to read as follows:

8 (e)(1) The Department of Human Services and the Department of Arkansas
9 of Arkansas may provide information, including protected health information,
10 to a person or agency that provides services such as medical examination of,
11 an assessment interview with, or diagnosis of, care for, treatment of, or
12 supervision of a victim of maltreatment, a juvenile offender, or an underaged
13 juvenile aggressor.

14
15 SECTION 33. Arkansas Code § 12-18-909(g), concerning the availability
16 of true reports of child maltreatment from the central registry, is amended
17 to read as follows:

18 (g) A report made under this chapter that is determined to be true, as
19 well as any other information obtained, including protected health
20 information and the administrative hearing decision, and a report written or
21 photograph or radiological procedure taken concerning a true report in the
22 possession of the Department of Human Services and the Department of Arkansas
23 of Arkansas shall be confidential and shall be made available only to:

24
25 SECTION 34. Arkansas Code § 12-18-909(g)(6), concerning the
26 availability of true reports of child maltreatment from the central registry,
27 is amended to read as follows:

28 (6)(A) A person, agency, or organization engaged in a bona fide
29 research or evaluation project having value as determined by the Department
30 of Human Services and the Department of Arkansas of Arkansas in future
31 planning for programs for maltreated children or in developing policy
32 directions.

33
34 SECTION 35. Arkansas Code § 12-18-910(b)(1), concerning the
35 availability of screened-out and unsubstantiated reports, is amended to read
36 as follows:

1 (b)(1) The Department of Human Services and the Department of Arkansas
2 of Arkansas may charge:

3 (A) A reasonable fee not to exceed ten dollars (\$10.00)
4 for researching, copying, or mailing records from a child maltreatment
5 investigative file; and

6 (B) A reasonable fee for reproducing copies of electronic
7 media, such as audio tapes, video tapes, compact discs, DVDs, and
8 photographs.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36