

Stricken language would be deleted from and underlined language would be added to present law.

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

As Engrossed: S3/11/15

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 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 State Police shall promulgate rules to implement this chapter.

12
13 12-18-106. Cooperative agreements.

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

20 (1) Law enforcement agencies;

21 (2) Prosecuting attorneys; and

22 (3) Other appropriate agencies and individuals.

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

25
26 SECTION 4. Arkansas Code § 12-18-209 is amended to read as follows:

27 12-18-209. Imposition of penalties.

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

31
32 SECTION 5. Arkansas Code § 12-18-301(b), concerning the creation of
33 the Child Abuse Hotline, is amended to read as follows:

34 (b) The Child Abuse Hotline is a unit established within the
35 Department of Human Services and the Department of Arkansas State Police or
36 its designee with the purpose of receiving and recording notifications and

1 reports under this chapter.

2

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

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

12

13 *SECTION 7. Arkansas Code § 12-18-503 is amended to read as follows:*
14 *12-18-503. Notification generally.*

15 *The Department of Human Services and the Department of Arkansas State*
16 *Police shall notify the following of any report of child maltreatment within*
17 *five (5) business days:*

18 (1) *The legal parents, legal guardians, and current foster*
19 *parent of a child in foster care who is named as a victim or alleged*
20 *offender;*

21 (2) *The attorney ad litem for any child named as the victim or*
22 *alleged offender;*

23 (3) *A person appointed by the court as the Court Appointed*
24 *Special Advocate volunteer for any child named as the victim or alleged*
25 *offender;*

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

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

31 (6) *The attorney ad litem and court-appointed special advocate*
32 *for any child in foster care when the alleged juvenile offender or underaged*
33 *juvenile offender is placed in the same placement as the attorney ad litem or*
34 *court-appointed special advocate's client;*

35 (7) *The responsible multidisciplinary team; and*

36 (8) *A mandated reporter, if the mandated reporter made the*

1 *initial notification of suspected child maltreatment and the notification has*
2 *been accepted for investigation.*

3

4 *SECTION 8. Arkansas Code § 12-18-504(a), concerning notification in*
5 *cases of reports of severe maltreatment, is amended to read as follows:*

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

9

10 *SECTION 9. Arkansas Code § 12-18-507(a), concerning notice when the*
11 *alleged victim is a resident of a facility licensed, registered, or operated*
12 *by the state, is amended to read as follows:*

13 (a) If the Child Abuse Hotline receives a report that a client or a
14 resident of a facility licensed or registered by the State of Arkansas has
15 been subjected to child maltreatment while at the facility, the Department of
16 Human Services and the Department of Arkansas State Police shall immediately
17 notify the facility director and the facility's licensing or registering
18 authority of the Child Abuse Hotline's receipt of a report of suspected child
19 maltreatment.

20

21 *SECTION 10. Arkansas Code § 12-18-601(d), concerning assignment of a*
22 *child maltreatment case to an investigative agency, is amended to read as*
23 *follows:*

24 (d)(1) The Department of Human Services and the Department of Arkansas
25 State Police may develop and implement triage procedures for accepting and
26 documenting reports of child maltreatment of a child not at risk of imminent
27 harm if an appropriate referral is made to a community organization or
28 voluntary preventive service.

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

33

34 *SECTION 11. Arkansas Code § 12-18-602(a), concerning the initiation of*
35 *an investigation of child maltreatment, is amended to read as follows:*

36 (a)~~(1)~~ The Department of Human Services and the Department of Arkansas

1 State Police shall cause an investigation to be made upon receiving initial
2 notification of suspected child maltreatment.

3
4 *SECTION 12.* Arkansas Code § 12-18-604(b), concerning services during
5 an investigation of child maltreatment, is amended to read as follows:

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

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

12 (A) The person has one (1) or more prescription drugs; and

13 (B) The baby or the person tested positive for
14 prescription drugs at the time of the birth of the baby.

15
16 *SECTION 13.* Arkansas Code § 12-18-609(c)(1), concerning the right to
17 enter for the purposes of a child maltreatment investigation, is amended to
18 read as follows:

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

26
27 *SECTION 14.* Arkansas Code § 12-18-612(b), concerning criminal
28 background checks, is amended to read as follows:

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

32
33 *SECTION 15.* Arkansas Code § 12-18-615(b) and (c), concerning radiology
34 procedures, photographs, electronic media, and medical records, is amended to
35 read as follows:

36 (b) A hospital, clinic, child safety center, or the Department of

1 Human Services and the Department of Arkansas State Police may make
2 electronic media that may be relevant as to the existence or extent of child
3 maltreatment.

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

7
8 *SECTION 16.* Arkansas Code § 12-18-616(a)(1), concerning the timing of
9 investigative determinations, is amended to read as follows:

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

16

17 *SECTION 17.* Arkansas Code § 12-18-618 is amended to read as follows:

18 12-18-618. Religious bias prohibited.

19 The Department of Human Services and the Department of Arkansas State
20 Police shall investigate all allegations of child maltreatment without regard
21 to the parent's practice of his or her religious beliefs and shall only
22 consider whether the acts or omissions of the parent constitute child
23 maltreatment under this chapter.

24

25 *SECTION 18.* Arkansas Code § 12-18-619(b)(1), concerning closing child
26 maltreatment investigations, is amended to read as follows:

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

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

32 (B) Close its investigation; and

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

36

1 *SECTION 19.* Arkansas Code § 12-18-702 is amended to read as follows:
2 12-18-702. Investigative determination.

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

6 (1)(A) Unsubstantiated.

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

9 (2)(A) True.

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

12 (C) A determination of true but exempted, which means that
13 the offender's name shall not be placed in the Child Maltreatment Central
14 Registry, shall be entered if:

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

20 (ii) The offender is an underaged juvenile offender;

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

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

25 (3)(A) Inactive.

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

28
29 *SECTION 20.* Arkansas Code § 12-18-703(a), concerning notice to alleged
30 offenders of the child maltreatment act, is amended to read as follows:

31 (a) The Department of Human Services and the Department of Arkansas
32 State Police shall notify each alleged offender of the child maltreatment
33 investigative determination whether true or unsubstantiated.

34
35 *SECTION 21.* Arkansas Code § 12-18-704 is amended to read as follows:
36 12-18-704. Notice if the investigative determination is true but

1 exempted and the alleged offender is a child.

2 If the investigative determination of the report was determined true
3 but exempted under § 12-18-702(2)(C)(ii) and the alleged offender is a child
4 at the time the act or omission occurred, the Department of Human Services
5 and the Department of Arkansas State Police shall notify the legal parents
6 and legal guardians of the investigative determination and that the child's
7 name shall not be placed in the Child Maltreatment Central Registry, and the
8 alleged offender may petition for an administrative hearing.

9

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

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

14 (1) If the alleged offender is in foster care, the Department of
15 *Human Services* and the Department of Arkansas State Police shall notify the
16 alleged offender's counsel and the legal parents, legal guardians, and
17 current foster parents of the alleged offender; or

18 (2) If the alleged offender is not in foster care, the
19 department shall notify the legal parents and legal guardians of the alleged
20 offender.

21

22 *SECTION 23.* Arkansas Code § 12-18-708(a), concerning miscellaneous
23 notice requirements, is amended to read as follows:

24 (a) The Department of Human Services and the Department of Arkansas
25 State Police shall confirm an investigative determination upon request from
26 the following:

27 (1) The responsible multidisciplinary team;

28 (2) The juvenile division of circuit court if the victim or
29 offender has an open dependency-neglect or family in need of services case;

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

32 (4) The court-appointed special advocate for any child named as
33 the alleged victim or offender;

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

36 (6) Any department division director or facility director

1 receiving notice of a Child Abuse Hotline report under this chapter;

2 (7) Any facility director receiving notice of a Child Abuse
3 Hotline report under this chapter;

4 (8) The attorney ad litem and court-appointed special advocate
5 volunteer of all other children in the same foster home if the child
6 maltreatment occurred in a foster home; and

7 (9) The attorney ad litem and court-appointed special advocate
8 volunteer for any child in foster care when the alleged juvenile offender or
9 underaged juvenile offender is placed in the same placement as the attorney
10 ad litem or court-appointed special advocate's client.

11
12 *SECTION 24.* Arkansas Code § 12-18-709(b)(1), concerning
13 confidentiality of child maltreatment reports, is amended to read as follows:

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

20
21 *SECTION 25.* Arkansas Code § 12-18-712(b), concerning mental health
22 services for alleged sex offenders under eighteen (18) years of age and the
23 victim, is amended to read as follows:

24 (b) The Department of Human Services and the Department of Arkansas
25 State Police shall:

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

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

33
34 *SECTION 26.* Arkansas Code § 12-18-808(a), concerning notice of
35 juvenile division circuit court proceedings, is amended to read as follows:

36 (a) The Department of Human Services and the Department of Arkansas

1 State Police shall notify the administrative law judge and the petitioner of
2 the status of any juvenile division of circuit court proceeding involving the
3 victim if child maltreatment at issue in the administrative hearing
4 proceeding is also an issue in the juvenile division of circuit court
5 proceeding.

6
7 *SECTION 27.* Arkansas Code § 12-18-810(b), concerning the authority to
8 amend investigative determinations based on evidence, is amended to read as
9 follows:

10 (b)(1) If the alleged offender could not reasonably infer the amended
11 investigative determination from the investigative record and information
12 submitted by the Department of Human Services and the Department of Arkansas
13 State Police, the administrative law judge shall, upon request, grant a
14 continuance to the alleged offender.

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

17
18 *SECTION 28.* Arkansas Code § 12-18-811(a)(1), concerning expedited
19 administrative hearings, is amended to read as follows:

20 (a)(1) If an alleged offender timely requests an administrative
21 hearing, the Department of Human Services and the Department of Arkansas
22 State Police may request that the administrative hearing be expedited if the
23 alleged offender is engaged in child-related activities or employment or the
24 alleged offender is employed or a volunteer with persons with disabilities,
25 persons with mental illnesses, or elderly persons.

26
27 *SECTION 29.* Arkansas Code § 12-18-812(a), concerning preliminary
28 administrative hearings, is amended to read as follows:

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

34
35 *SECTION 30.* Arkansas Code § 12-18-813(b)(1), concerning notice of
36 investigative determinations upon satisfaction of due process, is amended to

1 read as follows:

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

9

10 *SECTION 31.* Arkansas Code § 12-18-909(b)(1), concerning the
11 availability of true reports of child maltreatment from the central registry,
12 is amended to read as follows:

13 (b)(1) The Department of Human Services and the Department of Arkansas
14 State Police may charge:

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

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

21

22 *SECTION 32.* Arkansas Code § 12-18-909(d)(3), concerning the
23 availability of true reports of child maltreatment from the central registry,
24 is amended to read as follows:

25 (3) However, a local educational agency or a school counselor
26 shall forward all true reports of child maltreatment received from the
27 *Department of Human Services* and the Department of Arkansas State Police when
28 a child transfers from one (1) local educational agency to another and shall
29 notify the department of the child's new school and address, if known.

30

31 *SECTION 33.* Arkansas Code § 12-18-909(e)(1), concerning the
32 availability of true reports of child maltreatment from the central registry,
33 is amended to read as follows:

34 (e)(1) The Department of Human Services and the Department of Arkansas
35 State Police may provide information, including protected health information,
36 to a person or agency that provides services such as medical examination of,

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

4
5 *SECTION 34.* Arkansas Code § 12-18-909(g), concerning the availability
6 of true reports of child maltreatment from the central registry, is amended
7 to read as follows:

8 (g) A report made under this chapter that is determined to be true, as
9 well as any other information obtained, including protected health
10 information and the administrative hearing decision, and a report written or
11 photograph or radiological procedure taken concerning a true report in the
12 possession of the Department of Human Services and the Department of Arkansas
13 State Police shall be confidential and shall be made available only to:

14
15 *SECTION 35.* Arkansas Code § 12-18-909(g)(6), concerning the
16 availability of true reports of child maltreatment from the central registry,
17 is amended to read as follows:

18 (6)(A) A person, agency, or organization engaged in a bona fide
19 research or evaluation project having value as determined by the Department
20 *of Human Services and the Department of Arkansas of State Police in future*
21 *planning for programs for maltreated children or in developing policy*
22 *directions.*

23
24 *SECTION 36.* Arkansas Code § 12-18-910(b)(1), concerning the
25 availability of screened-out and unsubstantiated reports, is amended to read
26 as follows:

27 (b)(1) The Department of Human Services and the Department of Arkansas
28 State Police may charge:

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

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

35
36 /s/J. Woods