

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S2/25/19

A Bill

SENATE BILL 287

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CHILD MALTREATMENT INVESTIGATIONS AND THE PLACEMENT OF A NAME ON THE CHILD MALTREATMENT CENTRAL REGISTRY; TO REPEAL CERTAIN PROVISIONS OF THE CHILD MALTREATMENT ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING CHILD MALTREATMENT INVESTIGATIONS AND THE PLACEMENT OF A NAME ON THE CHILD MALTREATMENT CENTRAL REGISTRY; AND TO REPEAL CERTAIN PROVISIONS OF THE CHILD MALTREATMENT ACT.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) All members of society desire the safety of all children;

(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their children to school;



1 (4) As measured by incidences of mental health difficulties, the
2 over-supervised youth of today experience more difficulties when they reach
3 adulthood than earlier generations;

4 (5) Earlier generations learned resilience by walking,
5 bicycling, playing, helping, and solving problems without constant adult
6 intervention;

7 (6) Parents and guardians are often in the best position to
8 weigh the risk and make decisions concerning the safety of children under
9 their care, including without limitation where their child may go, with whom,
10 and when; and

11 (7) The excessive prosecution of parents and guardians who have
12 done nothing more than briefly and safely permit their children to remain
13 unsupervised has introduced unnecessary governmental intrusion into the homes
14 of families and diverted valuable public resources to inconsequential and
15 trivial matters.

16 (b) It is the intent of the General Assembly that this act:

17 (1) Protect and promote the inherent right of a parent or
18 guardian to raise his or her children;

19 (2) Protect the decision of a parent or a guardian to grant his
20 or her children unsupervised time to engage in activities that include
21 without limitation playing outside, walking to school, bicycling, remaining
22 briefly in a vehicle, and remaining at home; and

23 (3) Ensure that valuable public resources are used most
24 effectively to protect children by providing a secondary review to ensure
25 that:

26 (A) Calls to the Child Abuse Hotline are properly
27 accepted;

28 (B) Child maltreatment investigations are closed when the
29 results of the investigation indicate that the allegations lack merit; and

30 (C) Only the names of offenders who pose a risk to a
31 vulnerable population are placed on the Child Maltreatment Central Registry.

32
33 SECTION 2. Arkansas Code § 12-18-303, concerning minimum requirements
34 for a report to be accepted by the Child Abuse Hotline, is amended to add an
35 additional subsection to read as follows:

36 (e)(1)(A) A report of child maltreatment that does not meet the

1 requirements of subsection (a) of this section shall not be accepted by the
2 Child Abuse Hotline.

3 (B) The Child Abuse Hotline may accept a report of child
4 maltreatment that does not meet the requirements of subsection (a) of this
5 section if sufficient information is provided to accept the report under §§
6 12-18-304 -- 12-18-310.

7 (2)(A) The Department of Human Services and the Department of
8 Arkansas State Police shall establish procedures for the Child Abuse Hotline.

9 (B) The procedures established by the Department of Human
10 Services and the Department of Arkansas State Police shall include without
11 limitation the:

12 (i) Creation of a secondary review of an accepted
13 report of child maltreatment by the investigating agency assigned under § 12-
14 18-601 to ensure that the report of child maltreatment meets the requirements
15 of this section; and

16 (ii) Ability of the Child Abuse Hotline and the
17 investigating agency to contact the Department of Human Services to obtain or
18 determine information relevant to whether a report of child maltreatment
19 should be accepted.

20 (3) A report of child maltreatment that does not meet the
21 requirements of subsection (a) of this section shall be considered screened-
22 out for the purposes of releasing information under § 12-18-910.

23
24 SECTION 3. Arkansas Code § 12-18-601 is amended to read as follows:

25 12-18-601. Assignment to investigative agency.

26 ~~(a)(1) When a person, agency, corporation, or partnership then~~
27 ~~providing substitute care for any child in the custody of the Department of~~
28 ~~Human Services or a Department of Human Services employee or employee's~~
29 ~~spouse or other person residing in the home is reported as being suspected of~~
30 ~~child maltreatment, the investigation shall be conducted pursuant to~~
31 ~~procedures established by the Department of Human Services~~ If a report of
32 child maltreatment is accepted by the Child Abuse Hotline, an investigation
33 shall be conducted under procedures established by the Department of Human
34 Services.

35 (2) The procedures established by the Department of Human
36 Services shall require the:

1 (A) Assignment of a report of child maltreatment to the
2 Department of Human Services or the Department of Arkansas State Police as
3 the investigating agency;

4 (B) Assignment of a report of child maltreatment to the
5 Department of Arkansas State Police if the report involves:

6 (i) Severe maltreatment;

7 (ii) A person, agency, corporation, or partnership
8 that provides substitute care for a child who is in the custody of the
9 Department of Human Services; or

10 (iii) A person, agency, corporation, or partnership
11 that provides substitute care for a child who is in the custody of an
12 employee of the Department of Human Services or another person who resides in
13 the home of an employee of the Department of Human Services; and

14 (C) Assignment of a report of child maltreatment that
15 qualifies for triage procedures that are developed and implemented under this
16 section and as prescribed by triage procedures in lieu of an assignment for
17 investigation by the Department of Human Services or the Department of
18 Arkansas State Police.

19 ~~(b)(1)(A) The procedures described in subsection (a) of this section~~
20 ~~shall include referral of allegations to the Department of Arkansas State~~
21 ~~Police and any other appropriate law enforcement agency if the allegation~~
22 ~~involves severe maltreatment~~ After the assignment of a report of child
23 maltreatment, the investigating agency shall initiate an investigation as
24 provided under this subchapter.

25 (B) After initiating the investigation and interviewing
26 the alleged victim, the investigating agency shall review the report of child
27 maltreatment to determine if the investigation should be administratively
28 closed under § 12-18-702 without complying with the requirements of this
29 subchapter regarding a complete investigation.

30 (C) If an investigation is not administratively closed
31 under § 12-18-702, the investigating agency shall comply with the
32 requirements of this subchapter regarding a complete investigation.

33 (2)(A) The investigating agency shall administratively close an
34 investigation under procedures that are established by the Department of
35 Human Services.

36 (B) The procedures established by the Department of Human

1 Services shall require the:

2 (i) Closure of an investigation if there is no
3 evidence to support the report of child maltreatment other than the report
4 made to the Child Abuse Hotline;

5 (ii) Closure of an investigation if there is
6 insufficient detail to investigate the report of child maltreatment;

7 (iii)(a) Closure of an investigation that is based
8 on an allegation made by an anonymous reporter if there is no evidence to
9 corroborate the report of child maltreatment after the investigating agency
10 has conducted a preliminary investigation to determine whether there is any
11 evidence to corroborate the report of child maltreatment.

12 (b) A preliminary investigation shall include:

13 (1) An interview with the alleged
14 victim;

15 (2) A visit to the home of the alleged
16 victim if appropriate given the type of child maltreatment alleged; and

17 (3) Evidence from a collateral witness;

18 (iv) Closure of an investigation if:

19 (a) There has not been a substantiated report
20 of child maltreatment that lists the offender as the alleged offender who is
21 the subject of the current report;

22 (b) There has not been an additional report of
23 abuse or neglect that has been committed by the alleged offender who is the
24 subject of the current report;

25 (c) The investigator reviews the prior history
26 of child maltreatment related to the family of the child and to the offender
27 and determines that the health and safety of the child can be assured without
28 further investigation by the Department of Human Services or the Department
29 of Arkansas State Police; and

30 (d) The investigator determines that abuse or
31 neglect of the child did not occur; and

32 (v) Approval of the:

33 (a) Director of the Division of Children and
34 Family Services of the Department of Human Services or his or her designee
35 for the administrative closure of an investigation that is conducted by the
36 Department of Humans Services; or

1 (b) Director of the Department of Arkansas
2 State Police or his or her designee for the administrative closure of an
3 investigation conducted by the Department of Arkansas State Police.

4 ~~(e) Upon referral, the Department of Arkansas State Police shall~~
5 ~~investigate the allegations.~~

6 ~~(d)(1)(c)(1)~~ The Department of Human Services and the Department of
7 Arkansas State Police may develop and implement triage procedures for
8 accepting and documenting reports of child maltreatment of a child not at
9 risk of imminent harm ~~if an appropriate referral is made to a community~~
10 ~~organization or voluntary preventive service.~~

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

15 ~~(e)(1)(d)(1)~~ With regard to the procedures ~~described in subdivisions~~
16 ~~(d)(1) and (2)~~ established in accordance with subsections (a) and (b) of this
17 section, the Department of Human Services shall assess the safety of a child
18 upon the receipt of an accepted child maltreatment report.

19 (2) The assessment under subdivision ~~(e)(1)~~ (d)(1) of this
20 section shall include each underlying issue or additional child maltreatment
21 concern that may not have been identified in the original Child Abuse Hotline
22 report.

23 ~~(f)(e)~~ The Department of Human Services shall work with families
24 related to an accepted child maltreatment report to remedy the conditions or
25 issues that resulted in the child maltreatment report.

26
27 SECTION 4. Arkansas Code § 12-18-623 is repealed.

28 ~~12-18-623. No merit investigations.~~

29 ~~(a) A Department of Arkansas State Police investigator may close an~~
30 ~~investigation of a report of child maltreatment as unsubstantiated without~~
31 ~~complying with the requirements of this subchapter if:~~

32 ~~(1) The child identified as the victim:~~

33 ~~(A) Has been:~~

34 ~~(i) Interviewed separately and apart from the~~
35 ~~alleged offender or any representative or attorney for the alleged offender~~
36 ~~when the child is of the age or ability to be interviewed; or~~

1 ~~(ii) Observed separately and apart from the alleged~~
2 ~~offender or any representative or attorney for the alleged offender when the~~
3 ~~child is not of the age or ability to be interviewed; and~~

4 ~~(B) Credibly denies the allegation of child maltreatment;~~

5 ~~(2) The child identified as the victim does not have the~~
6 ~~physical injuries or physical conditions that were alleged in the report of~~
7 ~~child maltreatment;~~

8 ~~(3) The person identified as the alleged offender has been~~
9 ~~interviewed and credibly denies the allegation of child maltreatment;~~

10 ~~(4) The person identified as the alleged offender resides in the~~
11 ~~home or is a family member of the child identified as the victim and the~~
12 ~~Department of Arkansas State Police investigator has ascertained the~~
13 ~~environment in which the child resides and determined there is no merit to~~
14 ~~the report of child maltreatment as it pertains to the home environment;~~

15 ~~(5) The Department of Arkansas State Police investigator;~~

16 ~~(A) Has:~~

17 ~~(i) Interviewed the person who made the report to~~
18 ~~the Child Abuse Hotline; or~~

19 ~~(ii) Made a good faith effort to contact the person~~
20 ~~who made the report to the Child Abuse Hotline but is unable to interview the~~
21 ~~person; and~~

22 ~~(B) Has not identified another maltreatment or health or~~
23 ~~safety factor regarding the child identified as the victim; and~~

24 ~~(6) The Department of Arkansas State Police investigator~~
25 ~~interviewed a collateral witness and reviewed medical, school, and mental~~
26 ~~health records that are related to the allegations when the child identified~~
27 ~~as the victim was unable to effectively communicate.~~

28 ~~(b) The Children's Advocacy Centers of Arkansas shall conduct forensic~~
29 ~~interviews, forensic medical examinations, and forensic mental health~~
30 ~~examinations if available and appropriate during the course of a child~~
31 ~~maltreatment investigation as is required by the memorandum of understanding~~
32 ~~authorized under § 9-5-110.~~

33 ~~(c) All records under this section shall be released under §§ 12-18-~~
34 ~~620 and 12-18-910.~~

35 ~~(d) This section does not apply if the alleged victim is in the~~
36 ~~custody of the Department of Human Services and the alleged act or omission~~

1 ~~occurred while the child was in the custody of the Department of Human~~
2 ~~Services.~~

3
4 SECTION 5. Arkansas Code § 12-18-702 is amended to read as follows:

5 12-18-702. Investigative determination.

6 (a) Upon completion of an investigation under this chapter, the
7 Department of Human Services and the Department of Arkansas State Police
8 shall determine whether the allegations of child maltreatment are:

9 (1)(A) Unsubstantiated.

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

12 (2)(A) True.

13 (B) A true determination shall be entered when the
14 allegation is supported by a preponderance of the evidence;

15 (3)(A) True but exempted.

16 ~~(C)(B)~~ A determination of true but exempted, ~~which means~~
17 ~~that is a true determination where~~ the offender's name shall not be placed in
18 the Child Maltreatment Central Registry, shall be entered if:

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

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

25 (iii) The report was true for neglect as defined
26 under § 12-18-103(14)(B); or

27 (iv) The offender is a juvenile less than fourteen
28 (14) years of age at the time of the offense; or

29 ~~(3)(A)~~ (4)(A) Inactive.

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

32 (b) An investigation of a report of child maltreatment that is closed
33 under § 12-18-601 shall be documented as administratively closed without a
34 determination of whether the allegation is unsubstantiated, true, true but
35 exempt, or inactive.

36 (c)(1) If the Department of Human Services or the Department of

1 Arkansas State Police determines that a report of child maltreatment is true,
2 the Department of Human Services shall determine whether the offender may
3 pose a risk of maltreatment to a vulnerable population, including without
4 limitation children, the elderly, persons with a disability, and persons with
5 a mental health illness.

6 (2)(A) The Department of Human Services shall establish
7 procedures to determine the risk level of the offender and any vulnerable
8 population to which the offender may pose a risk of maltreatment.

9 (B) The procedures of the Department of Human Services
10 shall require the following factors to be considered in the determination of
11 whether an offender may pose a risk of maltreatment to a vulnerable
12 population:

13 (i) The severity of the child maltreatment;

14 (ii) The nature and severity of an injury or other
15 adverse impact caused by the child maltreatment;

16 (iii) The access the offender has to a vulnerable
17 population;

18 (iv) Any previous substantiated child maltreatment
19 findings against the offender;

20 (v) A subsequent report of child maltreatment
21 alleged against the offender; and

22 (vi) The criminal history of the offender.

23
24 SECTION 6. Arkansas Code § 12-18-812(d)(2), concerning preliminary
25 administrative hearings under the Child Maltreatment Act, is amended to read
26 as follows:

27 (2) A child, elderly person, person with a disability, or person
28 with a mental illness may be at risk of ~~harm~~ maltreatment.

29
30 SECTION 7. Arkansas Code Title 12, Chapter 18, Subchapter 8, is
31 amended to add an additional section to read as follows:

32 12-18-815. Adjudication of allegations and risk.

33 (a) In an administrative hearing held under this chapter, an
34 administrative law judge shall determine whether:

35 (1) A preponderance of the evidence supports a finding that an
36 allegation of child maltreatment is true; and

1 (2) The Department of Human Services abused its discretion in
2 determining that an offender may pose a risk of maltreatment to a vulnerable
3 population that includes without limitation, children, the elderly, persons
4 with a disability, and persons with a mental health illness.

5 (b) An administrative law judge shall direct the name of an offender
6 to be placed on the Child Maltreatment Central Registry if a preponderance of
7 the evidence supports a finding that:

8 (1) An allegation of child maltreatment is true; and

9 (2) The department did not abuse its discretion in determining
10 that the offender may pose a risk of maltreatment to a vulnerable population.

11
12 SECTION 8. Arkansas Code § 12-18-903 is amended to read as follows:

13 12-18-903. Placement in the Child Maltreatment Central Registry.

14 (a) An offender's name shall be placed in the Child Maltreatment
15 Central Registry if:

16 (1) After notice, the offender eighteen (18) years of age or
17 older at the time the act or omission occurred does not timely request an
18 administrative hearing;

19 (2) The alleged offender was a child at the time of the act or
20 omission and the child or his or her legal parent or legal guardian waived
21 the administrative hearing;

22 (3) The administrative law judge upheld the investigative
23 determination of true pursuant to a preliminary administrative hearing; or

24 (4) Upon completion of the administrative hearing process, the
25 Department of Human Services' or Department of Arkansas State Police's
26 investigative determination of true is upheld.

27 (b) In addition to the requirements of subsection (a) of this section,
28 the name of an offender shall be placed on the Child Maltreatment Central
29 Registry only if the Department of Human Services determines under § 12-18-
30 702 that the offender may pose a risk of maltreatment to a vulnerable
31 population that includes without limitation children, the elderly, persons
32 with a disability, and persons with a mental health illness.

33
34 SECTION 9. Arkansas Code § 12-18-910(a), concerning the availability
35 of screened-out and unsubstantiated reports, is amended to read as follows:

36 (a) Screened-out, administratively closed, and unsubstantiated reports

1 of child maltreatment are confidential and may be disclosed only as provided
2 in this chapter.

3
4 SECTION 10. Arkansas Code § 12-18-910(e), concerning the availability
5 of screened-out and unsubstantiated reports, is amended to read as follows:

6 (e) Any record of a screened-out or administratively closed report of
7 child maltreatment shall not be disclosed except to the prosecuting attorney
8 and law enforcement and may be used only within the Department of Human
9 Services and the Department of Arkansas State Police for purposes of
10 administration of the program.

11
12
13 /s/A. Clark
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36