

State of Arkansas
89th General Assembly
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As Engrossed: S3/19/13
A Bill

SENATE BILL 1005

By: Senator J. Dismang

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. Arkansas Code § 20-78-106 is amended to read as follows:

20-78-106. Availability of records ~~of~~ from children's advocacy centers, hospitals, or clinics during an investigation of suspected cases of child abuse or neglect.

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



except:

(1) ~~Medical records may be released to~~ To the attorney representing the abused child in a custody or juvenile case with an order of appointment or an order recognizing entry of appearance

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

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

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

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

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

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

(6) To the Department of Human Services;

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

(8) Images of a child's breast, genitals, or anus shall not be released except as provided under subsection (c) of this section;

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

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

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

~~(9)~~(10) Medical records may be released to a person providing medical or psychiatric care or services to the abused child.

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

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

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

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

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

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

- (i) Audio or videotapes of a child witness;*
- (ii) Photographs of a child witness;*
- (iii) Name of a child victim; ~~and~~*
- (iv) Medical records of a child victim; and*
- (v) Images of a child's breast, genitals, or anus*

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

- (i) Audio or videotapes of a child witness;*
- (ii) Photographs of a child witness;*
- (iii) Name of a child victim; ~~and~~*
- (iv) Medical records of a child victim; and*

(v) Images of a child's breast, genitals, or anus.

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

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

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

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

/s/J. Dismang

APPROVED: 04/12/2013