

Stricken language would be deleted from and underlined language would be added to present law.
Act 647 of the Regular Session

State of Arkansas *As Engrossed: H3/13/19 H3/18/19 H3/20/19*
92nd General Assembly **A Bill**
Regular Session, 2019

HOUSE BILL 1551

By: Representative Eubanks

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE
CONFIDENTIALITY OF RECORDS UNDER THE ARKANSAS
JUVENILE CODE OF 1989; CONCERNING SCHOOL NOTIFICATION
OF CERTAIN OFFENSES FOR WHICH A MINOR IS ADJUDICATED
OR CONVICTED; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE
CONFIDENTIALITY OF RECORDS UNDER THE
ARKANSAS JUVENILE CODE OF 1989; AND
CONCERNING SCHOOL NOTIFICATION OF CERTAIN
OFFENSES FOR WHICH A MINOR IS ADJUDICATED
OR CONVICTED.

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

SECTION 1. Arkansas Code Title 6, Chapter 10, is amended to add an additional section to read as follows:

6-10-133. Notification to school district of the adjudication or conviction of a minor – Confidentiality.

(a) For the purposes of this section, "minor" means a:

(1) Child who is under eighteen (18) years of age; or

(2) Person who is eighteen (18) years of age or older and is a student in a public secondary school.

(b) Upon receiving a written request, a court may provide information concerning the disposition of a minor who has been adjudicated delinquent or convicted of a criminal offense to the school superintendent or the designee



of the school superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(c) A prosecuting attorney shall notify the school superintendent or the designee of the school superintendent of the school district to which a minor transfers, in which the minor is enrolled, or from which the minor receives services if the minor is adjudicated delinquent for or convicted of:

(1) An offense involving a deadly weapon under § 5-1-102;

(2) Kidnapping under § 5-11-102;

(3) Battery in the first degree under § 5-13-201;

(4) Sexual indecency with a child under § 5-14-110;

(5) First, second, third, or fourth degree sexual assault under §§ 5-14-124 – 5-14-127; or

(6) The unlawful possession of a handgun under § 5-73-119.

(d) Information provided under subsections (b) and (c) of this section shall not be released in violation of any state or federal law protecting the privacy of the minor.

(e)(1) An arresting agency shall orally notify the superintendent or the designee of the superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services of the arrest or detention of the minor for one (1) or more of the following offenses:

(A) An offense involving a deadly weapon under § 5-1-102;

(B) Kidnapping under § 5-11-102;

(C) Battery in the first degree under § 5-13-201;

(D) Sexual indecency with a child under § 5-14-110;

(E) First, second, third, or fourth degree sexual assault under §§ 5-14-124 – 5-14-127; or

(F) The unlawful possession of a handgun under § 5-73-119.

(2) The notice required under subdivision (e)(1) of this section shall be provided within twenty-four (24) hours of the arrest or detention of the minor or before the next school day, whichever is earlier.

(3)(A) The superintendent of the school district in which the minor is enrolled or from which the minor receives services shall then immediately notify:

(i) The principal of the school;

(ii) The resource officer of the school; and
(iii) Any other school official with a legitimate educational interest in the minor.

(B) The arrest information shall:

(i) Be treated as confidential information; and
(ii) Not be disclosed by the superintendent or the designee of the superintendent to any person other than a person listed in subdivision (e)(3)(A) of this section.

(C) A person listed in subdivision (e)(3)(A) of this section who is notified of the arrest or detention of a minor by the superintendent or the designee of the superintendent shall maintain the confidentiality of the information he or she receives.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the minor or to ensure school safety.

(f) Records of the arrest of, the detention of, investigation of, or proceedings involving a minor are confidential and are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court;

(2) The arrest or the proceedings result in the minor being formally charged in the criminal division of circuit court for a felony; or

(3) As allowed under this section or § 9-27-320.

(g)(1) Information regarding the arrest or detention of a minor and proceedings related to the arrest or detention of the minor shall be confidential unless the exchange of information is:

(A) For the purpose of obtaining services for the minor or to ensure school safety;

(B) Reasonably necessary to achieve one (1) or both purposes; and

(C) Under a written order by the circuit court.

(2) Information regarding the arrest or detention of a minor may be given only to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

- (C) A law enforcement officer;
- (D) A spiritual representative designated by the minor or his or her parents or legal guardian;
- (E) A Department of Human Services caseworker;
- (F) A community-based provider designated by the court, the school, or the parent or legal guardian of the minor;
- (G) A Department of Health representative;
- (H) The minor's attorney or other court-appointed special advocate; or
- (I)(i) A school superintendent or the designee of the superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.
- (ii) A school superintendent or the designee of the superintendent of the school district in which the minor is enrolled or from which the minor receives services shall immediately notify the following persons of information he or she obtains under subdivision (g)(1) of this section:
- (a) The principal of the school;
- (b) The resource officer of the school; and
- (c) Any other school official with a legitimate educational interest in the minor.
- (3) A person listed in subdivision (g)(2) of this section may meet to exchange information, to discuss options for assistance to the minor, to develop and implement a plan of action to assist the minor and to ensure school safety.
- (4) The minor and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (g)(2) of this section when three (3) or more individuals meet to discuss assistance for the minor or the protection of the school due to the behavior of the minor.
- (5) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the minor's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (g)(2) of this section and the purpose for the disclosure.
- (6) A person listed in subdivision (g)(2) of this section who

exchanges any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with the limitations set forth in this section.

(h)(1) When a court orders a safety plan for a minor that restricts or requires supervised contact with another minor as it relates to student or school safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student safety be provided to the school superintendent, the designee of the superintendent, and the principal of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(2) When a court order amends or removes any safety plan outlined in subdivision (h)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student safety, be provided to the school superintendent, or his or her designee, and the principal of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(3) A school official who receives a court order and safety plan or information concerning the court order and safety plan shall:

(A) Keep the information confidential and shall sign a statement not to disclose the information concerning the court order and safety plan that shall be kept by the superintendent or principal along with the court order and safety plan;

(B) Keep the information confidential and shall not disclose the information to a person not listed in subdivision (g)(2) of this section;

(C) Include the information in the permanent educational records of the minor; and

(D)(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(ii) A school official shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(iii) However, the local education agency shall not

under any circumstance release, disclose, or make available for inspection to the public, any college, university, institution of higher education, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record of the minor.

(4) When a minor attains an age that he or she is no longer under the jurisdiction of the juvenile division of circuit court, the safety plan and the order regarding the safety plan shall be removed from the permanent records of the minor at the local education agency and destroyed.

SECTION 2. Arkansas Code § 9-27-309(f) and (g), concerning the confidentiality of records under the Arkansas Juvenile Code of 1989, are amended to read as follows:

(f) This subchapter does not preclude prosecuting attorneys or the court from providing information, upon written request, concerning the disposition of ~~juveniles who have~~ a juvenile who has been adjudicated delinquent to:

(1) The victim or his or her next of kin; or

(2) The school superintendent of the school district ~~in which the juvenile is currently enrolled~~ or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

~~(g) When a juvenile is adjudicated delinquent for an offense for which he or she could have been charged as an adult or for unlawful possession of a handgun, § 5-73-119, the prosecuting attorney shall notify the school superintendent of the school district in which the juvenile is currently enrolled~~ The prosecuting attorney shall notify the school superintendent or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services if the juvenile is adjudicated delinquent for:

(1) An offense for which the juvenile could have been charged as an adult;

(2) An offense involving a deadly weapon under § 5-1-102;

(3) Kidnapping under § 5-11-102;

(4) Battery in the first degree under § 5-13-201;

(5) Sexual indecency with a child under § 5-14-110;

(6) First, second, third, or fourth degree sexual assault under §§ 5-14-124 – 5-14-127; or

(7) The unlawful possession of a handgun under § 5-73-119.

SECTION 3. Arkansas Code § 9-27-309(i), concerning the confidentiality of records under the Arkansas Juvenile Code of 1989, is amended to read as follows:

(i)(1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall ~~as soon as practical and with all reasonable haste cause written notification of the arrest to be given to the superintendent of the school district in which the juvenile is currently enrolled~~ orally notify the superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services of the offense for which the juvenile was arrested or detained within twenty-four (24) hours of the arrest or detention or before the next school day, whichever is earlier.

(2)(A) ~~The superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services shall then immediately notify the principal and the resource officer of the school in which the juvenile is currently enrolled.;~~

(i) The principal of the school;

(ii) The resource officer of the school; and

(iii) Any other school official with a legitimate educational interest in the juvenile.

(B) The arrest information shall:

(i) be Be treated as confidential information; and

(ii) shall not Not be disclosed by the superintendent or the designee of the superintendent to any person other than the principal and resource officer a person listed in subdivision (i)(2)(A) of this section, who shall also maintain the information as confidential.

(C) A person listed in subdivision (i)(2)(A) of this section who is notified of the arrest or detention of a juvenile by the superintendent or the designee of the superintendent shall maintain the

confidentiality of the information he or she receives.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.

SECTION 4. Arkansas Code § 9-27-309(k) and (l), concerning the confidentiality of records under the Arkansas Juvenile Code of 1989, are amended to read as follows:

(k) Information regarding the arrest or detention of a juvenile and related proceedings under this subchapter shall be confidential unless the exchange of information is:

(1) For the purpose of obtaining services for the juvenile, to ensure school safety, or to ensure public safety;

(2) Reasonably necessary to achieve one (1) or ~~both~~ more purposes; and

(3) Under a written order by the circuit court.

(l)(1) The information may be given only to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the juvenile or his or her parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;

(G) A Department of Health representative; ~~or~~

(H) The juvenile's attorney ad litem or other court-appointed special advocate; or

(I)(i) A school superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(ii) A school superintendent or the designee of the superintendent of the school district in which the juvenile is enrolled or from which the juvenile receives services shall immediately notify the following persons of information he or she obtains under subsection (k) of this section:

(a) The principal of the school;

(b) The resource officer of the school; and

(c) Any other school official with a legitimate educational interest in the juvenile.

(2) The persons listed in subdivision (1)(1) of this section may meet to exchange information, to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, to ensure school safety, and to ensure public safety.

(3) The juvenile and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (1)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the juvenile's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (1)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subdivision (1)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with limitations set forth in this section.

SECTION 5. Arkansas Code § 9-27-309(m)(1)-(3), concerning the confidentiality of records under the Arkansas Juvenile Code of 1989, are amended to read as follows:

(m)(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to student or school safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student or school safety be provided to the school superintendent and principal ~~where the~~ of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(2) When a court order amends or removes any safety plan outlined in subdivision (m)(1) of this section, the court shall direct that a

copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student or school safety, be provided to the school superintendent ~~superintendent and principal where the~~ of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(3)(A) The superintendent or principal of the school district in which the juvenile is enrolled or from which the juvenile receives services shall provide verbal notification only to school officials who are necessary to implement the safety plan as ordered by the court to ensure student safety.

(B) This verbal notification may only be provided to assistant principals, counselors, resource officers, and the school ~~employee~~ who is employees who are primarily responsible for the supervision of the juvenile or responsible for the juvenile learning environment where the juvenile is currently of the juvenile in the school district in which the juvenile is enrolled or from which the juvenile receives services, and bus drivers, if applicable.

/s/Eubanks

APPROVED: 4/1/19