

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/24/15
A Bill

HOUSE BILL 1755

By: Representative V. Flowers

For An Act To Be Entitled

AN ACT TO REQUIRE NOTICE OF A CHILD MALTREATMENT ALLEGATION BE GIVEN TO A PRIVATE SCHOOL OR THE PARENTS OF AN ALLEGED CHILD OFFENDER IN CERTAIN CIRCUMSTANCES; TO VERIFY HOW A CUSTODIAN OF RECORDS SHALL RESPOND TO A SUBPOENA DUCES TECUM; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE NOTICE OF A CHILD MALTREATMENT ALLEGATION BE GIVEN TO A PRIVATE SCHOOL OR A PARENT IN CERTAIN CIRCUMSTANCES; AND TO VERIFY *HOW TO* RESPOND TO A SUBPOENA DUCES TECUM.

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

SECTION 1. Arkansas Code § 12-18-703(b)(1), concerning notice of a child maltreatment allegation, is amended to read as follows:

(b)(1) In every case in which a report is determined to be true, the department shall notify the alleged offender of the investigative determination by certified mail, restricted delivery, or by process server as permitted under Rule 4 of the Arkansas Rules of Civil Procedure.

SECTION 2. Arkansas Code § 12-18-909(g)(21), concerning a true report of child maltreatment being provided to protect children in a school environment, is amended to read as follows:

(21) The extent necessary to carry out a responsibility to



ensure that children are protected while in the school environment or during off-campus school activities:

(A) A school district superintendent, a person in an equivalent position in a private school, or other district-level administrator;

(B) A public school principal, a person in an equivalent position in a private school, or other building-level administrator;

(C)(i) Another person or organization designated by a public school, private school, or school district to organize volunteers for the public school, private school, or school district upon the submission of a signed, notarized release from the volunteer.

(ii) The registry shall release only the following information on true reports to a person or an organization:

(a) That the employee, applicant, or volunteer has a true report;

(b) The date the investigation was completed;

and

(c) The type of true report; and

(D) The Department of Education.

SECTION 3. Arkansas Code § 12-18-909(g), concerning a true report of child maltreatment to be provided to certain individuals, is amended to add an additional subdivision to read as follows:

(22) The custodial and noncustodial parents, guardians, and legal custodians of the child who is identified as the offender.

SECTION 4. Arkansas Code § 12-18-910(f), concerning an unsubstantiated report of child maltreatment to be provided to certain individuals, is amended to add an additional subdivision to read as follows:

(12) The custodial and noncustodial parents, guardians, and legal custodians of the child who is identified as the offender.

SECTION 5. Arkansas Code Title 12, Chapter 18, Subchapter 9, is amended to add an additional section to read as follows:

12-18-911. Records – Subpoena duces tecum.

(a) As used in this section:

(1) "Custodian of records" means the administrator of the Child Maltreatment Central Registry or his or her designee; and

(2) "Records" means data, records, or documents that are created, collected, or compiled by or on behalf of the Department of Human Services, the Department of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families.

(b)(1) A subpoena duces tecum for records shall be served on the custodian of records.

(2)(A) When a subpoena duces tecum described in subdivision (b)(1) of this section does not request the personal attendance of the custodian of records and the Department of Human Services is not a party to the action, the subpoena duces tecum is complied with when the custodian of records delivers to the court clerk or the officer, court reporter, body, or tribunal issuing the subpoena duces tecum or conducting the hearing, a true and correct copy of all records described in the subpoena duces tecum and the affidavit described in subsection (c) of this section.

(B) The records may be delivered by hand or registered mail.

(c)(1) The records shall be accompanied by an affidavit of the custodian of records stating that:

(A) The affiant is the duly authorized custodian of records and has authority to certify the records;

(B) The attached copies are a true copy of all the records described in the subpoena duces tecum; and

(C) The records were prepared by employees of the Department of Humans Service or the Crimes Against Children Division of the Arkansas State Police acting in the ordinary course of the business at or near the time of the child maltreatment investigation reported in the records.

(2) If the Child Maltreatment Central Registry does not have the records described in the subpoena duces tecum, or only part of the records, the custodian of records shall state so in the affidavit and file the affidavit and records as the records are available.

(3) The custodian of records may enclose a statement of costs pursuant to § 12-18-711 for copying the records, and the costs of copying the

records shall be charged to the party requesting the subpoena duces tecum for the records.

(d)(1) The copy of the records produced by the custodian of records shall be separately enclosed in an inner envelope or wrapper and sealed with the title and number of the action, the name of the custodian of records, and the date of the subpoena duces tecum clearly written on the inner envelope or wrapper.

(2) The sealed outer envelope or wrapper shall be addressed as follows:

(A) If the subpoena duces tecum directs attendance in court, to the clerk or the judge of the court;

(B) If the subpoena duces tecum directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena duces tecum for the taking of the deposition or at his or her place of business; and

(C) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(e)(1)(A) The copy of the records produced by the custodian of records shall remain sealed and be opened:

(i) At the time of trial, deposition, or hearing; or

(ii) Upon the direction of the judge, court, officer, body, or tribunal conducting the hearing.

(B) Before directing that the inner envelope or wrapper be opened, the judge, court, officer, body, or tribunal first shall ascertain if the custodian of records is authorized to release the records under § 12-18-620, § 12-18-710, § 12-18-909, or § 12-18-910.

(2) The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing.

(3) When the custodian of records is ordered to appear personally, he or she may open the sealed envelope or wrapper if the records produced are returned.

(f) The copy of the records shall be admissible in evidence to the same extent as though the original record was offered and the custodian of records had been present and testified to the matters stated in the affidavit.

(g)(1)(A) When the personal attendance of the custodian of records is requested, the subpoena duces tecum shall contain a clause which reads: "The personal attendance of the custodian of records is necessary".

(B) When both the personal attendance of the custodian of records and the production of a copy of the records are requested, the subpoena duces tecum shall contain a clause which reads: "A copy of the records and the personal attendance of the custodian of records are necessary".

(2) When the personal attendance of the custodian of records is requested, the reasonable cost of producing the records and expenses for personal attendance shall be charged to the party requesting the subpoena duces tecum.

/s/V. Flowers