

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

State of Arkansas
90th General Assembly
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As Engrossed: S3/16/15 S3/18/15
A Bill

SENATE BILL 1046

By: Senator J. Woods

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING REPORTS AND INVESTIGATIONS OF CHILD MALTREATMENT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING REPORTS AND INVESTIGATIONS OF CHILD MALTREATMENT.

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

SECTION 1. Arkansas Code § 12-18-103(20)(D), concerning the definition of sexual abuse, is amended to add an additional subdivision to read as follows:

(vii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact; or

SECTION 2. Arkansas Code § 12-18-103(22), concerning the definition of sexual exploitation, is amended to to read as follows:

(22) "Sexual exploitation" means:

(A) The following by a person eighteen (18) years of age or older to a child who is not his or her spouse:

~~(A)~~(i) Allowing, permitting, or encouraging participation or depiction of the child in:

~~(i)~~(a) Prostitution;

~~(ii)~~(b) Obscene photography; or

~~(iii)~~(c) Obscene filming; or

~~(B)~~(ii) Obscenely depicting, obscenely posing, or



obscenely posturing a the child for any use or purpose;

(B) The following by a caretaker to a child:

(i) Allowing, permitting, or encouraging participation or depiction of the child in:

(a) Prostitution;

(b) Obscene photography; or

(c) Obscene filming; or

(ii) Obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose;"

SECTION 3. Arkansas Code § 12-18-304, concerning qualifying reports of certain types of child maltreatment, is amended to add an additional subsection to read as follows:

(f) The Child Abuse Hotline shall not accept a report of giving a child or permitting a child to consume or inhale a poisonous or noxious substance as described in § 12-18-103(3)(A)(vii)(f) unless the alleged incident occurred within the previous three (3) months.

SECTION 4. Arkansas Code § 12-18-506(a), concerning the report of child abuse when the alleged offender in engaged in activities with children, is amended to read as follows:

(a) If the Child Abuse Hotline receives a report naming as an alleged offender a person who is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the Department of Human Services or the Department of Arkansas State Police has determined that children, the elderly, or individuals with a disability or mental illness under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, ~~the department~~ Department of Human Services or the Department of Arkansas State Police may notify the following of the report made to the Child Abuse Hotline:

(1) The alleged offender's employer;

(2) The school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;

(3) The person in charge of a paid or volunteer activity; and

(4) The appropriate licensing or registering authority to the

extent necessary to carry out its official responsibilities.

SECTION 5. Arkansas Code § 12-18-602(b)(2), concerning the initial investigation of child maltreatment, is amended to read as follows:

(2) However, the investigation shall begin within twenty-four (24) hours if:

(A) The allegation is severe maltreatment, excluding an allegation of:

(i) ~~sexual~~ Sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or the alleged victim does not currently have contact with the alleged offender; ~~or~~

(ii) Abandonment and the child is in a facility; or

(iii) Cuts, welts, bruises, or suffocation if the most recent allegation was more than one (1) year ago and the alleged victim is in the custody of the department; or

(B) The allegation is that a child has been subjected to neglect as defined in § 12-18-103(13)(B).

SECTION 6. Arkansas Code § 12-18-607(4), concerning an investigation of child maltreatment when the alleged offender does not reside in the same house as the victim, is amended to read as follows:

(4) ~~The~~ If the report is determined to be true, the names and conditions of any children of the alleged offender and whether these children have been maltreated or are at risk of child maltreatment;

SECTION 7. Arkansas Code § 12-18-608, concerning the interview of an alleged victim of child maltreatment, is amended to add an additional subsection to read as follows:

(c)(1) If a person conducting an investigation under this chapter is denied access to a child as permitted under this section, the Department of Human Services or the Department of Arkansas State Police may petition the proper juvenile division of a circuit court for an ex parte order of investigation to limit the persons allowed to be present when the child is being interviewed.

(2) However, upon application to the circuit court and a showing of good cause by a parent, caretaker, or person denying unrestricted access

to a child, the circuit court may issue a written order to stay the order of investigation pending a hearing to be held within seventy-two (72) hours.

SECTION 8. Arkansas Code § 12-18-620(e), concerning the release of information on pending investigations under the Child Maltreatment Act, is amended to read as follows:

(e) Information on a pending investigation, including protected health information, shall be released upon request to:

(1) The Department of Human Services, excluding pending investigations on an employee or spouse of the Division of Children and Family Services;

(2) Law enforcement;

(3) The prosecuting attorney;

(4) The responsible multidisciplinary team;

(5) Attorney ad litem of the alleged victim or offender;

(6) Court Appointed Special Advocate of the alleged victim or offender;

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

(8) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(9) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and

(10)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

SECTION 9. Arkansas Code Title 12, Chapter 18, Subchapter 6, is amended to add an additional section to read as follows:

12-18-621. Right to obtain records during course of the investigation.

(a) Upon a request by a person conducting an investigation under this chapter, the keeper of the record shall provide the person conducting the investigation with the following:

(1) Records showing the nature and extent of the child's present and past injuries;

(2) Records showing previous injuries or child maltreatment of the child or his or her siblings;

(3) School records, as described under § 12-18-610;

(4) Personnel and volunteer records, as described under § 12-18-611; and

(5) Results of radiological procedures, photographs, or medical records, as described under § 12-18-615.

(b)(1) If a person conducting an investigation under this chapter is denied records authorized to be released under subsection (a) of this section, the Department of Human Services and the Department of Arkansas State Police may petition the proper juvenile division of circuit court for an ex parte order of investigation to obtain the records.

(2) However, upon application to the circuit court and a showing of good cause by the keeper of the record, the circuit court may issue a written order to stay the order to tender records pending a hearing to be held within seventy-two (72) hours.

SECTION 10. Arkansas Code § 12-18-701(a), concerning the final report of the conclusion of an investigation of child maltreatment, is amended to read as follows:

(a) The agency responsible for an investigation under this chapter shall make a complete written report ~~of the investigation by~~ at the conclusion of ~~a period of thirty (30) days~~ the investigation.

SECTION 11. Arkansas Code § 12-18-707(a), concerning when an alleged offender of child maltreatment works with certain at risk individuals, is amended to read as follows:

(a) If the child maltreatment investigative determination names as an alleged offender a person who is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the Department of Human Services or the Department of Arkansas State Police has determined that children, the elderly, or individuals with a disability or mental illness under the care of the alleged offender appear to be at risk of maltreatment

by the alleged offender, the ~~department~~ Department of Human Services or the Department of Arkansas State Police may notify the following of the investigative determination:

- (1) An alleged offender's employer;
- (2) A school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;
- (3) A person in charge of a paid or volunteer activity; and
- (4) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

SECTION 12. Arkansas Code § 12-18-710(e) concerning the release of information on true investigative determination pending due process under the Child Maltreatment Act, is amended to read as follows:

(e) Information on a completed investigation, including protected health information, pending due process shall be released upon request to:

- (1) The alleged offender;
- (2) The ~~department~~ Department of Human Services, excluding pending investigations on an employee or spouse of the Division of Children and Family Services;
- (3) Law enforcement;
- (4) The prosecuting attorney;
- (5) The responsible multidisciplinary team;
- (6) Attorney ad litem for the victim or offender;
- (7) Court-appointed special advocate for the victim or offender;
- (8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;
- (9) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;
- (10) Any facility director receiving notice of a Child Abuse Hotline report under this chapter; and
- (11)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

SECTION 13. Arkansas Code § 12-18-801(b), concerning the time it takes the Department of Human Services to complete an administrative hearing, is amended to add an additional subdivision to read as follows:

(4) The administrative law judge shall stay the case upon a request by the Department of Human Services or the Department of Arkansas State Police when there is an ongoing criminal or delinquency investigation or pending criminal charges regarding the occurrence that is the subject of the child maltreatment report.

SECTION 14. Arkansas Code § 12-18-813(c)(1), concerning the notice given to certain individuals of a true determination finding of child maltreatment, is amended to read as follows:

(c)(1) Upon satisfaction of due process and if the investigative determination is true, if the offender is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the ~~department~~ Department of Human Services or the Department of Arkansas State Police has determined that children, the elderly, or individuals with a disability or mental illness under the care of the offender appear to be at risk of maltreatment by the offender, the ~~department~~ Department of Human Services or the Department of Arkansas State Police may notify the following of the investigative determination:

- (A) The offender's employer;
 - (B) A school superintendent, principal, or a person in an equivalent position where the offender is employed;
 - (C) A person in charge of a paid or volunteer activity;
- and
- (D) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

SECTION 15. Arkansas Code § 12-18-1006(a), concerning custody of children generally under the Child Maltreatment Act, is amended to read as follows:

(a)(1) During the course of any child maltreatment investigation, whether conducted by the Department of Human Services, the Department of

Arkansas State Police, or local law enforcement, the Department of Human Services shall assess whether or not the child can safely remain in the home.

(2) If the Department of Arkansas State Police is the investigative agency, it shall disclose information as needed for the Department of Human Services to make an assessment regarding whether a child can safely remain in the home.

/s/J. Woods