

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: S3/11/15 H3/20/15
A Bill

SENATE BILL 809

By: Senator J. Woods
By: Representative M. Gray

For An Act To Be Entitled

AN ACT TO ESTABLISH DUAL AUTHORITY AND RESPONSIBILITY
OVER THE CHILD MALTREATMENT ACT FOR THE DEPARTMENT OF
HUMAN SERVICES AND THE ARKANSAS DEPARTMENT OF STATE
POLICE; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH DUAL AUTHORITY AND
RESPONSIBILITY OVER THE CHILD
MALTREATMENT ACT FOR THE DEPARTMENT OF
HUMAN SERVICES AND THE ARKANSAS
DEPARTMENT OF STATE POLICE.

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

SECTION 1. Arkansas Code § 12-18-103(8), concerning definitions for the Child Maltreatment Act, is amended to read as follows:

(8) "Department" means the Department of Human Services and the Department of Arkansas State Police

SECTION 2. Arkansas Code § 12-18-104(b), concerning the confidentiality of information reported under the Child Maltreatment Act, is amended to read as follows:

(b) Any data, records, reports, or documents released under this chapter to law enforcement, a prosecuting attorney, or a court by the ~~Department of Human Services~~ department are confidential and shall be sealed and not re-disclosed without a protective order to ensure the items of



evidence for which there is a reasonable expectation of privacy are not distributed to a person or institution without a legitimate interest in the evidence, provided that nothing in this chapter is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or the law.

SECTION 3. Arkansas Code §§ 12-18-105 and 12-18-106 are amended to read as follows:

12-18-105. Rules.

The ~~Director of the~~ Department of Human Services and the Department of Arkansas State Police shall promulgate rules to implement this chapter.

12-18-106. Cooperative agreements.

(a) The ~~Director of the~~ Department of Human Services and the Department of Arkansas State Police shall implement a coordinated multidisciplinary team approach to intervention in reports involving severe maltreatment and all reports requested by a prosecuting attorney pertaining to a law enforcement or prosecuting attorney's investigation by initiating formal cooperative agreements with:

- (1) Law enforcement agencies;
- (2) Prosecuting attorneys; and
- (3) Other appropriate agencies and individuals.

(b) *The ~~director~~ the Director of the Department of Human Services may enter into cooperative agreements with other states to create a national child maltreatment registration system.*

SECTION 4. Arkansas Code § 12-18-209 is amended to read as follows:

12-18-209. Imposition of penalties.

The Department of Human Services and the Department of Arkansas State Police or a prosecuting attorney may file a petition in the appropriate court seeking imposition of penalties for violation of this chapter.

SECTION 5. Arkansas Code § 12-18-301(b), concerning the creation of the Child Abuse Hotline, is amended to read as follows:

(b) The Child Abuse Hotline is a unit established within the Department of Human Services and the Department of Arkansas State Police or

its designee with the purpose of receiving and recording notifications and reports under this chapter.

SECTION 6. Arkansas Code § 12-18-502(a)(1), concerning the release and disclosure of data generally from the Child Abuse Hotline, is amended to read as follows:

(a)(1) The Department of Human Services and the Department of Arkansas State Police shall not release data that would identify the person who made the report to the Child Abuse Hotline unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

*SECTION 7. Arkansas Code § 12-18-503 is amended to read as follows:
12-18-503. Notification generally.*

The Department of Human Services and the Department of Arkansas State Police shall notify the following of any report of child maltreatment within five (5) business days:

(1) The legal parents, legal guardians, and current foster parent of a child in foster care who is named as a victim or alleged offender;

(2) The attorney ad litem for any child named as the victim or alleged offender;

(3) A person appointed by the court as the Court Appointed Special Advocate volunteer for any child named as the victim or alleged offender;

(4) Counsel in a dependency-neglect case or family in need of services case when the child is named as a victim or alleged offender;

(5) The attorney ad litem and Court Appointed Special Advocate volunteer for all other children in the same foster home if the child maltreatment occurred in a foster home;

(6) The attorney ad litem and court-appointed special advocate for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client;

(7) The responsible multidisciplinary team; and

(8) A mandated reporter, if the mandated reporter made the initial notification of suspected child maltreatment and the notification has been accepted for investigation.

SECTION 8. Arkansas Code § 12-18-504(a), concerning notification in cases of reports of severe maltreatment, is amended to read as follows:

(a) The Department of Human Services and the Department of Arkansas State Police shall immediately notify local law enforcement of all reports of severe maltreatment.

SECTION 9. Arkansas Code § 12-18-507(a), concerning notice when the alleged victim is a resident of a facility licensed, registered, or operated by the state, is amended to read as follows:

(a) If the Child Abuse Hotline receives a report that a client or a resident of a facility licensed or registered by the State of Arkansas has been subjected to child maltreatment while at the facility, the Department of Human Services and the Department of Arkansas State Police shall immediately notify the facility director and the facility's licensing or registering authority of the Child Abuse Hotline's receipt of a report of suspected child maltreatment.

SECTION 10. Arkansas Code § 12-18-601(d), concerning assignment of a child maltreatment case to an investigative agency, is amended to read as follows:

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

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

SECTION 11. Arkansas Code § 12-18-602(a), concerning the initiation of an investigation of child maltreatment, is amended to read as follows:

(a)~~(1)~~ The Department of Human Services and the Department of Arkansas State Police shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment.

SECTION 12. Arkansas Code § 12-18-604(b), concerning services during an investigation of child maltreatment, is amended to read as follows:

(b)(1) The Department of Human Services and the Department of Arkansas State Police may petition a circuit court to allow an investigator to access the controlled substance database.

(2) The court may grant a petition under this subsection if the Department of Human Services and the Department of Arkansas State Police demonstrated probable cause that:

- (A) The person has one (1) or more prescription drugs; and
- (B) The baby or the person tested positive for prescription drugs at the time of the birth of the baby.

SECTION 13. Arkansas Code § 12-18-609(c)(1), concerning the right to enter for the purposes of a child maltreatment investigation, is amended to read as follows:

(c)(1) If necessary access or admission is denied to a person conducting an investigation under this chapter, 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 requiring the parent, caretaker, or persons denying access to any place where the child may be to allow entrance for the interviews, examinations, and investigations.

SECTION 14. Arkansas Code § 12-18-612(b), concerning criminal background checks, is amended to read as follows:

(b) The results of the criminal background check shall not be disclosed outside of the Department of Human Services and the Department of Arkansas State Police except as permitted under this chapter.

SECTION 15. Arkansas Code § 12-18-615(b) and (c), concerning radiology procedures, photographs, electronic media, and medical records, is amended to read as follows:

(b) A hospital, clinic, child safety center, or the Department of Human Services and the Department of Arkansas State Police may make electronic media that may be relevant as to the existence or extent of child maltreatment.

(c) The ~~Department of Human Services~~ department or law enforcement officials shall be provided at no cost a copy of the results of radiology procedures, electronic media, photographs, or medical records upon request.

SECTION 16. Arkansas Code § 12-18-616(a)(1), concerning the timing of investigative determinations, is amended to read as follows:

(a)(1) Except as otherwise provided in this section, an investigative determination shall be made in each investigation under this chapter within forty-five (45) days regardless of whether the investigation is conducted by the Department of Human Services, ~~the Crimes Against Children Division of the Department of Arkansas State Police,~~ and the Department of Arkansas State Police or local law enforcement.

SECTION 17. Arkansas Code § 12-18-618 is amended to read as follows:
12-18-618. Religious bias prohibited.

The Department of Human Services and the Department of Arkansas State Police shall investigate all allegations of child maltreatment without regard to the parent's practice of his or her religious beliefs and shall only consider whether the acts or omissions of the parent constitute child maltreatment under this chapter.

SECTION 18. Arkansas Code § 12-18-619(b)(1), concerning closing child maltreatment investigations, is amended to read as follows:

(b)(1) If at any time before or during the investigation it appears that the alleged offender is identified and is not a caretaker of the victim child, excluding investigations of sexual abuse, the Department of Human Services and the Department of Arkansas State Police shall:

- (A) Refer the matter to the appropriate law enforcement agency;
- (B) Close its investigation; and
- (C) Forward a copy of its findings to the appropriate law enforcement agency for the agency's further use in any criminal investigation.

SECTION 19. Arkansas Code § 12-18-702 is amended to read as follows:
12-18-702. Investigative determination.

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

(1)(A) Unsubstantiated.

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

(2)(A) True.

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

(C) A determination of true but exempted, which means that the offender's name shall not be placed in the Child Maltreatment Central Registry, shall be entered if:

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

(ii) The offender is an underaged juvenile offender;

(iii) The report was true for neglect as defined under § 12-18-103(13)(B); or

(iv) The offender is a juvenile less than fourteen (14) years of age; or

(3)(A) Inactive.

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

SECTION 20. Arkansas Code § 12-18-703(a), concerning notice to alleged offenders of the child maltreatment act, is amended to read as follows:

(a) The Department of Human Services and the Department of Arkansas State Police shall notify each alleged offender of the child maltreatment investigative determination whether true or unsubstantiated.

SECTION 21. Arkansas Code § 12-18-704 is amended to read as follows:

12-18-704. Notice if the investigative determination is true but exempted and the alleged offender is a child.

If the investigative determination of the report was determined true but exempted under § 12-18-702(2)(C)(ii) and the alleged offender is a child at the time the act or omission occurred, the Department of Human Services and the Department of Arkansas State Police shall notify the legal parents and legal guardians of the investigative determination and that the child's name shall not be placed in the Child Maltreatment Central Registry, and the alleged offender may petition for an administrative hearing.

SECTION 22. Arkansas Code § 12-18-705(b), concerning notice if a alleged child maltreatment offender is at least fourteen years of age and less than eighteen years of age, is amended to read as follows:

(b) The notice under this section shall be provided as follows:

(1) If the alleged offender is in foster care, the Department of *Human Services* and the Department of Arkansas State Police shall notify the alleged offender's counsel and the legal parents, legal guardians, and current foster parents of the alleged offender; or

(2) If the alleged offender is not in foster care, the department shall notify the legal parents and legal guardians of the alleged offender.

SECTION 23. Arkansas Code § 12-18-708(a), concerning miscellaneous notice requirements, is amended to read as follows:

(a) The Department of Human Services and the Department of Arkansas State Police shall confirm an investigative determination upon request from the following:

- (1) The responsible multidisciplinary team;
- (2) The juvenile division of circuit court if the victim or offender has an open dependency-neglect or family in need of services case;
- (3) The attorney ad litem for any child who is named as the victim or offender;
- (4) The court-appointed special advocate for any child named as the alleged victim or offender;
- (5) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(6) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;

(7) Any facility director receiving notice of a Child Abuse Hotline report under this chapter;

(8) The attorney ad litem and court-appointed special advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home; and

(9) The attorney ad litem and court-appointed special advocate volunteer for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client.

SECTION 24. Arkansas Code § 12-18-709(b)(1), concerning confidentiality of child maltreatment reports, is amended to read as follows:

(b)(1) The Department of Human Services and the Department of Arkansas State Police shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

SECTION 25. Arkansas Code § 12-18-712(b), concerning mental health services for alleged sex offenders under eighteen (18) years of age and the victim, is amended to read as follows:

(b) The Department of Human Services and the Department of Arkansas State Police shall:

(1) Provide the parents or legal guardians of the alleged sex offender and the victim with a list of the mental health professionals or agencies available to evaluate and treat the alleged sex offender and the victim, if necessary; and

(2) Assist the parents or legal guardians of the alleged sex offender and the victim with a referral for a mental health evaluation, if necessary.

SECTION 26. Arkansas Code § 12-18-808(a), concerning notice of juvenile division circuit court proceedings, is amended to read as follows:

(a) The Department of Human Services and the Department of Arkansas State Police shall notify the administrative law judge and the petitioner of the status of any juvenile division of circuit court proceeding involving the victim if child maltreatment at issue in the administrative hearing proceeding is also an issue in the juvenile division of circuit court proceeding.

SECTION 27. Arkansas Code § 12-18-810(b), concerning the authority to amend investigative determinations based on evidence, is amended to read as follows:

(b)(1) If the alleged offender could not reasonably infer the amended investigative determination from the investigative record and information submitted by the Department of Human Services and the Department of Arkansas State Police, the administrative law judge shall, upon request, grant a continuance to the alleged offender.

(2) However, an amendment of the investigative determination shall not be done after the conclusion of the hearing.

SECTION 28. Arkansas Code § 12-18-811(a)(1), concerning expedited administrative hearings, is amended to read as follows:

(a)(1) If an alleged offender timely requests an administrative hearing, the Department of Human Services and the Department of Arkansas State Police may request that the administrative hearing be expedited if the alleged offender is engaged in child-related activities or employment or the alleged offender is employed or a volunteer with persons with disabilities, persons with mental illnesses, or elderly persons.

SECTION 29. Arkansas Code § 12-18-812(a), concerning preliminary administrative hearings, is amended to read as follows:

(a) If the Department of Human Services and the Department of Arkansas State Police is unable to notify an offender of an investigative determination under this chapter, the department may request a preliminary administrative hearing to allow provisional placement of the offender's name in the Child Maltreatment Central Registry.

SECTION 30. Arkansas Code § 12-18-813(b)(1), concerning notice of

investigative determinations upon satisfaction of due process, is amended to read as follows:

(b)(1) Upon satisfaction of due process and if the investigative determination is true, the Department of Human Services and the Department of Arkansas State Police shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the department to the child.

SECTION 31. Arkansas Code § 12-18-909(b)(1), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(b)(1) The Department of Human Services and the Department of Arkansas State Police may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tables, video tapes, compact discs, DVDs, and photographs.

SECTION 32. Arkansas Code § 12-18-909(d)(3), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the *Department of Human Services* and the Department of Arkansas State Police when a child transfers from one (1) local educational agency to another and shall notify the department of the child's new school and address, if known.

SECTION 33. Arkansas Code § 12-18-909(e)(1), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(e)(1) The Department of Human Services and the Department of Arkansas State Police may provide information, including protected health information,

to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

SECTION 34. Arkansas Code § 12-18-909(g), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(g) A report made under this chapter that is determined to be true, as well as any other information obtained, including protected health information and the administrative hearing decision, and a report written or photograph or radiological procedure taken concerning a true report in the possession of the Department of Human Services and the Department of Arkansas State Police shall be confidential and shall be made available only to:

SECTION 35. Arkansas Code § 12-18-909(g)(6), concerning the availability of true reports of child maltreatment from the central registry, is amended to read as follows:

(6)(A) A person, agency, or organization engaged in a bona fide research or evaluation project having value as determined by the Department of Human Services and the Department of Arkansas of State Police in future planning for programs for maltreated children or in developing policy directions.

SECTION 36. Arkansas Code § 12-18-910(b)(1), concerning the availability of screened-out and unsubstantiated reports, is amended to read as follows:

(b)(1) The Department of Human Services and the Department of Arkansas State Police may charge:

(A) A reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tapes, video tapes, compact discs, DVDs, and photographs.

/s/J. Woods