

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

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S2/20/17 S3/21/17
A Bill

SENATE BILL 305

By: Senator A. Clark
By: Representative Hammer

For An Act To Be Entitled

AN ACT TO AMEND THE DEFINITION OF "NEGLECT" AND THE LAW CONCERNING CLOSURES OF CHILD MALTREATMENT INVESTIGATIONS; TO MAKE CERTAIN ACTS OF A PARENT, GUARDIAN, CUSTODIAN, OR FOSTER PARENT NONCRIMINAL; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE DEFINITION OF "NEGLECT" AND THE LAW CONCERNING CLOSURES OF CHILD MALTREATMENT INVESTIGATIONS; AND TO MAKE CERTAIN ACTS OF A PARENT, GUARDIAN, CUSTODIAN, OR FOSTER PARENT NONCRIMINAL.

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

SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

- (1) Everyone desires the safety of all children;
- (2) A child raised under constant adult supervision misses opportunities for growth and, as a result, may end up stunted developmentally and physically;
- (3) The alarming rise of obesity and diabetes in childhood is almost certainly linked to the insistence of parents and guardians on driving their children to school and activities instead of allowing their children to walk;
- (4) As measured by incidences of mental health difficulties,



today's over-supervised youth experience more difficulties upon reaching adulthood than earlier generations;

(5) Earlier generations learned resilience by walking, bicycling, playing, helping out, and solving problems without constant adult intervention;

(6) Parents and guardians often are in the best position to weigh the risks and make decisions concerning the safety of children under their care, including where their children may go, with whom, and when; and

(7) The excessive investigation and prosecution of parents and guardians who have done nothing more than briefly and safely permit their children to remain unsupervised has introduced unnecessary governmental intrusion into the homes of families and diverted valuable public resources to inconsequential and trivial matters.

SECTION 2. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly that this act:

(1) Protect and promote a parent or guardian's inherent right to raise his or her children; and

(2) Protect a parent or guardian's decision to grant his or her children unsupervised time to engage in activities that include without limitation playing outside, walking to school, bicycling, remaining briefly in a vehicle, and remaining at home.

SECTION 3. Arkansas Code Title 5, Chapter 27, Subchapter 1, is amended to add an additional section to read as follows:

5-27-101. Noncriminal acts of parents, custodians, guardians, and foster parents.

An act of a parent, custodian, guardian, or foster parent described under § 12-18-103(14)(C) is not a criminal offense.

SECTION 4. Arkansas Code § 12-18-103(14), concerning the definition of "neglect" under the Child Maltreatment Act, is amended to add an additional subdivision to read as follows:

(C) "Neglect" does not include a parent, custodian, guardian, or foster parent who permits his or her child to perform the following actions unsupervised if the child is of sufficient capacity to

avoid immediate danger and a significant risk of harm:

(i) Travel to and from school including without limitation traveling by walking, running, or bicycling;

(ii) Engage in outdoor play;

(iii) Remain for less than fifteen (15) minutes in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold; or

(iv) Remain at home before and after school if the parent, custodian, guardian, or foster parent:

(a) Returns home on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home;

(b) Makes provisions for the child to be able to contact the parent, custodian, guardian, or foster parent on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home; and

(c) Makes provisions for any reasonably foreseeable emergencies that may arise on the same day on which the parent, custodian, guardian, or foster parent gives the child permission to remain at home;

SECTION 5. Arkansas Code § 12-18-303, concerning the minimum requirements for reports to be accepted by the Child Abuse Hotline, is amended to add an additional subsection to read as follows:

(e) A report that does not meet the requirements of subsection (a) of this section shall not be accepted by the Child Abuse Hotline.

SECTION 6. Arkansas Code § 12-18-601(d), concerning triage procedures developed and implemented by the Department of Human Services and the Department of Arkansas State Police, 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) Triage procedures developed and implemented under this

subsection may include without limitation procedures for the:

(A) Appropriate referral of a report of child maltreatment to a community organization or voluntary preventive service; and

(B) Closure of an investigation of a report of child maltreatment.

(3) Triage procedures developed and implemented under this subsection shall require the closure of an investigation of a report of child maltreatment if before, during, or after a referral or an investigation it is determined that the report of child maltreatment does not meet the requirements of § 12-18-303(a).

(4) 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 7. Arkansas Code § 12-18-619, concerning the closure of child maltreatment investigations by the Department of Human Services and the Department of Arkansas State Police, is amended to add an additional subsection to read as follows:

(d) The Department of Human Services and the Department of Arkansas State Police shall close a child maltreatment investigation if at any time before or during the investigation it is determined that the report of child maltreatment does not meet the requirements of § 12-18-303(a).

SECTION 8. Arkansas Code § 12-18-623(a), concerning investigations of reports of child maltreatment that may be closed by a Department of Arkansas State Police investigator as unsubstantiated, is amended to read as follows:

(a)(1) A Department of Arkansas State Police investigator shall close an investigation of a report of child maltreatment as unsubstantiated if it is determined that the report of child maltreatment does not meet the requirements of § 12-18-303(a).

(2) A Department of Arkansas State Police investigator may close an investigation of a report of child maltreatment as unsubstantiated without complying with the requirements of this subchapter if:

~~(1)~~(A) The child identified as the victim:

~~(A)~~(i) Has been:

~~(i)(a)~~ *Interviewed separate and apart from the alleged offender or any representative or attorney for the alleged offender when the child is of the age or ability to be interviewed; or*

~~(ii)(b)~~ *Observed separate and apart from the alleged offender or any representative or attorney for the alleged offender when the child is not of the age or ability to be interviewed; and*

~~(B)(ii)~~ *Credibly denies the allegation of child maltreatment;*

~~(2)(B)~~ *The child identified as the victim does not have the physical injuries or physical conditions that were alleged in the report of child maltreatment;*

~~(3)(C)~~ *The person identified as the alleged offender has been interviewed and credibly denies the allegation of child maltreatment;*

~~(4)(D)~~ *The person identified as the alleged offender resides in the home or is a family member of the child identified as the victim, the Department of Arkansas State Police investigator has ascertained the environment in which the child resides and determined there is no merit to the report of child maltreatment as it pertains to the home environment;*

~~(5)(E)~~ *The Department of Arkansas State Police investigator:*

~~(A)(i)~~ *Has interviewed the person who made the report to the Child Abuse Hotline; or*

~~(B)(ii)~~ *Has made a good faith effort to contact the person who made the report to the Child Abuse Hotline but is unable to interview the person; and*

~~(C)(iii)~~ *Has not identified another maltreatment or health or safety factor regarding the victim child; and*

~~(6)(F)~~ *The Department of Arkansas State Police investigator interviewed a collateral witness and reviewed medical, school, and mental health records that are related to the allegations when the child was unable to effectively communicate.*

/s/A. Clark