

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

State of Arkansas *As Engrossed: S2/25/19 S2/28/19 H3/25/19*
92nd General Assembly **A Bill**
Regular Session, 2019

SENATE BILL 287

By: Senator A. Clark
By: Representative Capp

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING CHILD MALTREATMENT INVESTIGATIONS AND THE PLACEMENT OF A NAME ON THE CHILD MALTREATMENT CENTRAL REGISTRY; TO REPEAL CERTAIN PROVISIONS OF THE CHILD MALTREATMENT ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING CHILD MALTREATMENT INVESTIGATIONS AND THE PLACEMENT OF A NAME ON THE CHILD MALTREATMENT CENTRAL REGISTRY; AND TO REPEAL CERTAIN PROVISIONS OF THE CHILD MALTREATMENT ACT.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) All members of society desire the safety of all children;

(2) A child raised under constant adult supervision may miss opportunities for growth that will negatively impact his or her mental and physical development;

(3) The alarming rise of childhood obesity and diabetes is almost certainly linked to an increase in the sedentary lifestyle and lack of physical activity for children today, which is often encouraged by parents and guardians, including without limitation by insisting on driving their



children to school;

(4) As measured by incidences of mental health difficulties, the over-supervised youth of today experience more difficulties when they reach adulthood than earlier generations;

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

(6) Parents and guardians are often in the best position to weigh the risk and make decisions concerning the safety of children under their care, including without limitation where their child may go, with whom, and when; and

(7) Parents and guardians who have done nothing more than briefly and safely permitted their children to remain unsupervised should not be subject to investigation and possible prosecution as it causes unnecessary governmental intrusion and diversion of valuable public resources.

(b) It is the intent of the General Assembly that this act:

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

(2) Protect the decision of a parent or a guardian 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; and

(3) Ensure that valuable public resources are used most effectively to protect children by providing a secondary review to ensure that:

(A) Calls to the Child Abuse Hotline are properly accepted;

(B) Child maltreatment investigations are closed when the results of the investigation indicate that the allegations lack merit; and

(C) Only the names of offenders who pose a risk to a vulnerable population are placed on the Child Maltreatment Central Registry.

SECTION 2. Arkansas Code § 12-18-303, concerning minimum requirements for a report to be accepted by the Child Abuse Hotline, is amended to add an additional subsection to read as follows:

(e)(1)(A) A report of child maltreatment that does not meet the

requirements of subsection (a) of this section shall not be accepted by the Child Abuse Hotline.

(B) The Child Abuse Hotline may accept a report of child maltreatment that does not meet the requirements of subsection (a) of this section if sufficient information is provided to accept the report under §§ 12-18-304 -- 12-18-310.

(2)(A) The Department of Human Services and the Department of Arkansas State Police shall establish procedures for the Child Abuse Hotline.

(B) The procedures established by the Department of Human Services and the Department of Arkansas State Police shall include without limitation the:

(i) Creation of a secondary review of an accepted report of child maltreatment by the investigating agency assigned under § 12-18-601 to ensure that the report of child maltreatment meets the requirements of this section; and

(ii) Ability of the Child Abuse Hotline and the investigating agency to contact the Department of Human Services to obtain or determine information relevant to whether a report of child maltreatment should be accepted.

(3) A report of child maltreatment that does not meet the requirements of subsection (a) of this section shall be considered screened-out for the purposes of releasing information under § 12-18-910.

SECTION 3. Arkansas Code § 12-18-601 is amended to read as follows:

12-18-601. Assignment to investigative agency.

~~(a)(1) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the Department of Human Services or a Department of Human Services employee or employee's spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the Department of Human Services~~ If a report of child maltreatment is accepted by the Child Abuse Hotline, an investigation shall be conducted under procedures established by the Department of Human Services.

(2) The procedures established by the Department of Human Services shall require the:

(A) Assignment of a report of child maltreatment to the Department of Human Services or the Department of Arkansas State Police as the investigating agency;

(B) Assignment of a report of child maltreatment to the Department of Arkansas State Police if the report involves:

(i) Severe maltreatment;

(ii) A person, agency, corporation, or partnership that provides substitute care for a child who is in the custody of the Department of Human Services; or

(iii) A person, agency, corporation, or partnership that provides substitute care for a child who is in the custody of an employee of the Department of Human Services or another person who resides in the home of an employee of the Department of Human Services; and

(C) Assignment of a report of child maltreatment that qualifies for triage procedures that are developed and implemented under this section and as prescribed by triage procedures in lieu of an assignment for investigation by the Department of Human Services or the Department of Arkansas State Police.

~~(b)(1)(A) The procedures described in subsection (a) of this section shall include referral of allegations to the Department of Arkansas State Police and any other appropriate law enforcement agency if the allegation involves severe maltreatment~~ After the assignment of a report of child maltreatment, the investigating agency shall initiate an investigation as provided under this subchapter.

(B) After initiating the investigation and interviewing the alleged victim, the investigating agency shall review the report of child maltreatment to determine if the investigation should be administratively closed under § 12-18-702 without complying with the requirements of this subchapter regarding a complete investigation.

(C) If an investigation is not administratively closed under § 12-18-702, the investigating agency shall comply with the requirements of this subchapter regarding a complete investigation.

(2)(A) The investigating agency shall administratively close an investigation under procedures that are established by the Department of Human Services.

(B) The procedures established by the Department of Human

Services shall require the:

(i) Closure of an investigation if there is no evidence to support the report of child maltreatment other than the report made to the Child Abuse Hotline;

(ii) Closure of an investigation if there is insufficient detail to investigate the report of child maltreatment;

(iii)(a) Closure of an investigation that is based on an allegation made by an anonymous reporter if there is no evidence to corroborate the report of child maltreatment after the investigating agency has conducted a preliminary investigation to determine whether there is any evidence to corroborate the report of child maltreatment.

(b) A preliminary investigation shall include:

(1) An interview with the alleged victim;

(2) A visit to the home of the alleged victim if appropriate given the type of child maltreatment alleged; and

(3) Evidence from a collateral witness;

(iv) Closure of an investigation if:

(a) There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report;

(b) The investigator reviews the prior history of child maltreatment related to the family of the child and to the offender and determines that the health and safety of the child can be assured without further investigation by the Department of Human Services or the Department of Arkansas State Police; and

(c) The investigator determines that abuse or neglect of the child did not occur; and

(v) Approval of the:

(a) Director of the Division of Children and Family Services of the Department of Human Services or his or her designee for the administrative closure of an investigation that is conducted by the Department of Humans Services; or

(b) Director of the Department of Arkansas State Police or his or her designee for the administrative closure of an investigation conducted by the Department of Arkansas State Police.

~~(c) Upon referral, the Department of Arkansas State Police shall investigate the allegations.~~

~~(d)(1)(c)(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.

~~(e)(1)(d)(1)~~ With regard to the procedures ~~described in subdivisions (d)(1) and (2)~~ established in accordance with subsections (a) and (b) of this section, the Department of Human Services shall assess the safety of a child upon the receipt of an accepted child maltreatment report.

(2) The assessment under subdivision ~~(e)(1)~~ (d)(1) of this section shall include each underlying issue or additional child maltreatment concern that may not have been identified in the original Child Abuse Hotline report.

~~(f)(e)~~ The Department of Human Services shall work with families related to an accepted child maltreatment report to remedy the conditions or issues that resulted in the child maltreatment report.

SECTION 4. Arkansas Code § 12-18-623 is repealed.

~~12-18-623. No merit investigations.~~

~~(a) 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) The child identified as the victim:~~

~~(A) Has been:~~

~~(i) Interviewed separately 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) Observed separately 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) Credibly denies the allegation of child maltreatment;~~

~~(2) 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) The person identified as the alleged offender has been interviewed and credibly denies the allegation of child maltreatment;~~

~~(4) The person identified as the alleged offender resides in the home or is a family member of the child identified as the victim and 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) The Department of Arkansas State Police investigator:~~

~~(A) Has:~~

~~(i) Interviewed the person who made the report to the Child Abuse Hotline; or~~

~~(ii) 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~~

~~(B) Has not identified another maltreatment or health or safety factor regarding the child identified as the victim; and~~

~~(6) 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 identified as the victim was unable to effectively communicate.~~

~~(b) The Children's Advocacy Centers of Arkansas shall conduct forensic interviews, forensic medical examinations, and forensic mental health examinations if available and appropriate during the course of a child maltreatment investigation as is required by the memorandum of understanding authorized under § 9-5-110.~~

~~(c) All records under this section shall be released under §§ 12-18-620 and 12-18-910.~~

~~(d) This section does not apply if the alleged victim is in the custody of the Department of Human Services and the alleged act or omission occurred while the child was in the custody of the Department of Human Services.~~

SECTION 5. Arkansas Code § 12-18-702 is amended to read as follows:
12-18-702. Investigative determination.

(a) 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;

(3)(A) True but exempted.

~~(C)(B)~~ A determination of true but exempted, ~~which means that is a true determination where~~ 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(14)(B); or

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

~~(3)(A)~~(4)(A) Inactive.

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

(b) An investigation of a report of child maltreatment that is closed under § 12-18-601 shall be documented as administratively closed without a determination of whether the allegation is unsubstantiated, true, true but exempt, or inactive.

(c)(1) If the Department of Human Services or the Department of Arkansas State Police determines that a report of child maltreatment is true, the Department of Human Services shall determine whether the offender may pose a risk of maltreatment to a vulnerable population, including without

limitation children, the elderly, persons with a disability, and persons with a mental health illness.

(2)(A) The Department of Human Services shall establish procedures to determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment.

(B) The procedures of the Department of Human Services shall require the following factors to be considered in the determination of whether an offender may pose a risk of maltreatment to a vulnerable population:

- (i) The severity of the child maltreatment;
- (ii) The nature and severity of an injury or other adverse impact caused by the child maltreatment;
- (iii) The access the offender has to a vulnerable population;
- (iv) Any previous substantiated child maltreatment findings against the offender;
- (v) A subsequent report of child maltreatment alleged against the offender; and
- (vi) The criminal history of the offender.

SECTION 6. Arkansas Code § 12-18-812(d)(2), concerning preliminary administrative hearings under the Child Maltreatment Act, is amended to read as follows:

(2) A child, elderly person, person with a disability, or person with a mental illness may be at risk of ~~harm~~ maltreatment.

SECTION 7. Arkansas Code Title 12, Chapter 18, Subchapter 8, is amended to add an additional section to read as follows:

12-18-815. Adjudication of allegations and risk.

(a) In an administrative hearing held under this chapter, an administrative law judge shall determine whether:

(1) A preponderance of the evidence supports a finding that an allegation of child maltreatment is true; and

(2) The Department of Human Services abused its discretion in determining that an offender may pose a risk of maltreatment to a vulnerable population that includes without limitation, children, the elderly, persons

with a disability, and persons with a mental health illness.

(b) An administrative law judge shall direct the name of an offender to be placed on the Child Maltreatment Central Registry if a preponderance of the evidence supports a finding that:

(1) An allegation of child maltreatment is true; and

(2) The department did not abuse its discretion in determining that the offender may pose a risk of maltreatment to a vulnerable population.

SECTION 8. Arkansas Code § 12-18-903 is amended to read as follows:

12-18-903. Placement in the Child Maltreatment Central Registry.

(a) An offender's name shall be placed in the Child Maltreatment Central Registry if:

(1) After notice, the offender eighteen (18) years of age or older at the time the act or omission occurred does not timely request an administrative hearing;

(2) The alleged offender was a child at the time of the act or omission and the child or his or her legal parent or legal guardian waived the administrative hearing;

(3) The administrative law judge upheld the investigative determination of true pursuant to a preliminary administrative hearing; or

(4) Upon completion of the administrative hearing process, the Department of Human Services' or Department of Arkansas State Police's investigative determination of true is upheld.

(b) In addition to the requirements of subsection (a) of this section, the name of an offender shall be placed on the Child Maltreatment Central Registry only if the Department of Human Services determines under § 12-18-702 that the offender may pose a risk of maltreatment to a vulnerable population that includes without limitation children, the elderly, persons with a disability, and persons with a mental health illness.

SECTION 9. Arkansas Code § 12-18-910(a), concerning the availability of screened-out and unsubstantiated reports, is amended to read as follows:

(a) Screened-out, administratively closed, and unsubstantiated reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

SECTION 10. Arkansas Code § 12-18-910(e), concerning the availability of screened-out and unsubstantiated reports, is amended to read as follows:

(e) Any record of a screened-out or administratively closed report of child maltreatment shall not be disclosed except to the prosecuting attorney and law enforcement and may be used only within the Department of Human Services and the Department of Arkansas State Police for purposes of administration of the program.

/s/A. Clark