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4

A Bill

HOUSE BILL 1551

5 By: Representative Eubanks
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For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE
9 CONFIDENTIALITY OF RECORDS UNDER THE ARKANSAS
10 JUVENILE CODE OF 1989; CONCERNING SCHOOL NOTIFICATION
11 OF CERTAIN OFFENSES FOR WHICH A MINOR IS ADJUDICATED
12 OR CONVICTED; AND FOR OTHER PURPOSES.
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Subtitle

15 TO AMEND THE LAW CONCERNING THE
16 CONFIDENTIALITY OF RECORDS UNDER THE
17 ARKANSAS JUVENILE CODE OF 1989; AND
18 CONCERNING SCHOOL NOTIFICATION OF CERTAIN
19 OFFENSES FOR WHICH A MINOR IS ADJUDICATED
20 OR CONVICTED.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 6, Chapter 10, is amended to add an
27 additional section to read as follows:

28 6-10-133. Notification to school district of the adjudication or
29 conviction of a minor – Confidentiality.

30 (a) For the purposes of this section, "minor" means a:

31 (1) Child who is under eighteen (18) years of age; or

32 (2) Person who is eighteen (18) years of age or older and is a
33 student in a public secondary school.

34 (b) Upon receiving a written request, a court may provide information
35 concerning the disposition of a minor who has been adjudicated delinquent or
36 convicted of a criminal offense to the school superintendent or the designee



1 of the school superintendent of the school district to which the minor
 2 transfers or is enrolled.

3 (c) A prosecuting attorney shall notify the school superintendent or
 4 the designee of the school superintendent of the school district to which a
 5 minor transfers or is enrolled if the minor is adjudicated delinquent for or
 6 convicted of:

7 (1) An offense for which the minor could have been charged as an
 8 adult;

9 (2) An offense involving a deadly weapon under § 5-1-102;

10 (3) Kidnapping under § 5-11-102;

11 (4) Battery in the first degree under § 5-13-201;

12 (5) Sexual indecency with a child under § 5-14-110;

13 (6) First, second, third, or fourth degree sexual assault under
 14 §§ 5-14-124 – 5-14-127;

15 (7) A felony offense involving the unlawful use, sale or
 16 possession of controlled substance listed under the Uniform Controlled
 17 Substances Act, § 5-64-401 et seq.; or

18 (8) The unlawful possession of a handgun under § 5-73-119.

19 (d) Information provided under subsections (b) and (c) of this section
 20 shall not be released in violation of any state or federal law protecting the
 21 privacy of the minor.

22 (e)(1) An arresting agency shall orally notify the superintendent or
 23 the designee of the superintendent of the school district to which the minor
 24 transfers or is enrolled of the arrest or detention of the minor for the
 25 following offenses:

26 (A) An offense for which the minor could have been charged
 27 as an adult;

28 (B) An offense involving a deadly weapon under § 5-1-102;

29 (C) Kidnapping under § 5-11-102;

30 (D) Battery in the first degree under § 5-13-201;

31 (E) Sexual indecency with a child under § 5-14-110;

32 (F) First, second, third, or fourth degree sexual assault
 33 under §§ 5-14-124 – 5-14-127;

34 (G) A felony offense involving the unlawful use, sale or
 35 possession of controlled substance listed under the Uniform Controlled
 36 Substances Act, § 5-64-401 et seq.; or

1 (H) The unlawful possession of a handgun under § 5-73-119.

2 (2) The notice required under subdivision (e)(1) of this section
3 shall be provided within twenty-four (24) hours of the arrest or detention of
4 the minor or before the next school day, whichever is earlier.

5 (3)(A) The superintendent of the school district in which the
6 minor is enrolled shall then immediately notify:

7 (i) The principal of the school;

8 (ii) The resource officer of the school; and

9 (iii) Any other instructional and support personnel
10 who are responsible for supervising the minor or have a legitimate interest
11 in the education of the minor under the Family Educational Rights and Privacy
12 Act of 1974, 20 U.S.C. § 1232g et seq.

13 (B) The arrest information shall:

14 (i) Be treated as confidential information; and

15 (ii) Not be disclosed by the superintendent or the
16 designee of the superintendent to any person other than a person listed in
17 subdivision (e)(3)(A) of this section.

18 (C) A person listed in subdivision (e)(3)(A) of this
19 section who is notified of the arrest or detention of a minor by the
20 superintendent or the designee of the superintendent shall maintain the
21 confidentiality of the information he or she receives.

22 (3) The arrest information shall be used by the school only for
23 the limited purpose of obtaining services for the minor or to ensure school
24 safety.

25 (f) Records of the arrest of, the detention of, investigation of, or
26 proceedings involving a minor are confidential and are not subject to
27 disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.,
28 unless:

29 (1) Authorized by a written order of the juvenile division of
30 circuit court;

31 (2) The arrest or the proceedings result in the minor being
32 formally charged in the criminal division of circuit court for a felony; or

33 (3) As allowed under this section or § 9-27-320.

34 (g)(1) Information regarding the arrest or detention of a minor and
35 proceedings related to the arrest or detention of the minor shall be
36 confidential unless the exchange of information is:

1 (A) For the purpose of obtaining services for the minor or
 2 to ensure school safety;

3 (B) Reasonably necessary to achieve one (1) or both
 4 purposes; and

5 (C) Under a written order by the circuit court.

6 (2) Information regarding the arrest or detention of a minor may
 7 be given only to the following persons:

8 (A) A school counselor;

9 (B) A juvenile court probation officer or caseworker;

10 (C) A law enforcement officer;

11 (D) A spiritual representative designated by the minor or
 12 his or her parents or legal guardian;

13 (E) A Department of Human Services caseworker;

14 (F) A community-based provider designated by the court,
 15 the school, or the parent or legal guardian of the minor;

16 (G) A Department of Health representative;

17 (H) The minor's attorney ad litem or other court-appointed
 18 special advocate; or

19 (I)(i) A school superintendent or the designee of the
 20 superintendent of the school district to which the minor transfers or is
 21 enrolled.

22 (ii) A school superintendent or the designee of the
 23 superintendent of the school district in which the minor is enrolled shall
 24 immediately notify the following persons of information he or she obtains
 25 under subdivision (g)(1) of this section:

26 (a) The principal of the school;

27 (b) The resource officer of the school; and

28 (c) Any other instructional and support
 29 personnel who are responsible for supervising the minor or have a legitimate
 30 interest in the education of the minor under the Family Educational Rights
 31 and Privacy Act of 1974, 20 U.S.C. § 1232g et seq.

32 (3) A person listed in subdivision (g)(2) of this section may
 33 meet to exchange information, to discuss options for assistance to the minor,
 34 to develop and implement a plan of action to assist the minor and to ensure
 35 school safety.

36 (4) The minor and his or her parent or legal guardian shall be

1 notified within a reasonable time before a meeting and may attend any meeting
2 of the persons referred to in subdivision (g)(2) of this section when three
3 (3) or more individuals meet to discuss assistance for the minor or the
4 protection of the school due to the behavior of the minor.

5 (5) Medical records, psychiatric records, psychological records,
6 and related information shall remain confidential unless the minor's parent
7 or legal guardian waives confidentiality in writing specifically describing
8 the records to be disclosed between the persons listed in subdivision (g)(2)
9 of this section and the purpose for the disclosure.

10 (6) A person listed in subdivision (g)(2) of this section who
11 exchanges any information referred to in this section may be held civilly
12 liable for disclosure of the information if the person does not comply with
13 the limitations set forth in this section.

14 (h)(1) When a court orders a safety plan for a minor that restricts or
15 requires supervised contact with another minor as it relates to student or
16 school safety, the court shall direct that a copy of the safety plan and a
17 copy of the court order regarding the safety plan concerning student safety
18 be provided to the school superintendent, the designee of the superintendent,
19 and the principal of the school district to which the minor transfers or is
20 enrolled.

21 (2) When a court order amends or removes any safety plan
22 outlined in subdivision (h)(1) of this section, the court shall direct that a
23 copy of the safety plan and a copy of the court order regarding the safety
24 plan, as it relates to student safety, be provided to the school
25 superintendent, or his or her designee, and the principal of the school
26 district to which the minor transfers or is enrolled.

27 (3)(A) The superintendent, the designee of the superintendent,
28 or principal shall provide verbal notification only to school officials who
29 are necessary to implement the safety plan as ordered by the court to ensure
30 student or school safety.

31 (B) This verbal notification may only be provided to
32 assistant principals, counselors, resource officers, and the school employees
33 who are primarily responsible for the supervision of the minor or responsible
34 for the learning environment of the minor in the school district to which the
35 minor transfers or is enrolled, and bus drivers if applicable.

36 (4) A school official who receives a court order and safety plan

1 or information concerning the court order and safety plan shall:

2 (A) Keep the information confidential and shall sign a
 3 statement not to disclose the information concerning the court order and
 4 safety plan that shall be kept by the superintendent or principal along with
 5 the court order and safety plan;

6 (B) Keep the information confidential and shall not
 7 disclose the information to a person not listed in subdivision (g)(2) of this
 8 section;

9 (C) Include the information in the permanent educational
 10 records of the minor; and

11 (D)(i) Treat the information and documentation contained
 12 in the court order as education records under the Family Educational Rights
 13 and Privacy Act, 20 U.S.C. § 1232g.

14 (ii) A school official shall not release, disclose,
 15 or make available the information and documentation contained in the court
 16 order for inspection to any party except as permitted under the Family
 17 Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

18 (iii) However, the local education agency shall not
 19 under any circumstance release, disclose, or make available for inspection to
 20 the public, any college, university, institution of higher education,
 21 vocational or trade school, or any past, present, or future employer of the
 22 student the court order or safety plan portion of a student record of the
 23 minor.

24 (5) When a minor attains an age that he or she is no longer
 25 under the jurisdiction of the juvenile division of circuit court, the safety
 26 plan and the order regarding the safety plan shall be removed from the
 27 permanent records of the minor at the local education agency and destroyed.

28
 29 SECTION 2. Arkansas Code § 9-27-309(f) and (g), concerning the
 30 confidentiality of records under the Arkansas Juvenile Code of 1989, are
 31 amended to read as follows:

32 (f) This subchapter does not preclude prosecuting attorneys or the
 33 court from providing information, upon written request, concerning the
 34 disposition of ~~juveniles who have~~ a juvenile who has been adjudicated
 35 delinquent to:

36 (1) The victim or his or her next of kin; or

1 (2) The school superintendent of the school district ~~in which~~
2 ~~the juvenile is currently enrolled~~ or the designee of the school
3 superintendent of the school district in which the juvenile is enrolled or
4 transfers.

5 (g) ~~When a juvenile is adjudicated delinquent for an offense for which~~
6 ~~he or she could have been charged as an adult or for unlawful possession of a~~
7 ~~handgun, § 5-73-119, the prosecuting attorney shall notify the school~~
8 ~~superintendent of the school district in which the juvenile is currently~~
9 ~~enrolled~~ The prosecuting attorney shall notify the school superintendent or
10 the designee of the school superintendent of the school district in which the
11 juvenile is enrolled or transfers if the juvenile is adjudicated delinquent
12 for:

13 (1) An offense for which the juvenile could have been charged as
14 an adult;

15 (2) An offense involving a deadly weapon under § 5-1-102;

16 (3) Kidnapping under § 5-11-102;

17 (4) Battery in the first degree under § 5-13-201;

18 (5) Sexual indecency with a child under § 5-14-110;

19 (6) First, second, third, or fourth degree sexual assault under
20 §§ 5-14-124 – 5-14-127;

21 (7) A felony offense involving the unlawful use, sale, or
22 possession of controlled substance listed under the Uniform Controlled
23 Substances Act, § 5-64-401 et seq.; or

24 (8) The unlawful possession of a handgun under § 5-73-119.

25
26 SECTION 3. Arkansas Code § 9-27-309(i), concerning the confidentiality
27 of records under the Arkansas Juvenile Code of 1989, is amended to read as
28 follows:

29 (i)(1) If a juvenile is arrested for unlawful possession of a firearm
30 under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or
31 battery in the first degree under § 5-13-201, the arresting agency shall ~~as~~
32 ~~soon as practical and with all reasonable haste cause written notification of~~
33 ~~the arrest to be given to the superintendent of the school district in which~~
34 ~~the juvenile is currently enrolled~~ orally notify the superintendent or the
35 designee of the superintendent of the school district in which the student is
36 enrolled or transfers of the offense for which the juvenile was arrested or

1 detained within twenty-four (24) hours of the arrest or detention or before
 2 the next school day, whichever is earlier.

3 (2)(A) The superintendent of the school district in which the
 4 juvenile is enrolled or transfers shall then immediately notify ~~the principal~~
 5 ~~and the resource officer of the school in which the juvenile is currently~~
 6 ~~enrolled.;~~

7 (i) The principal of the school;

8 (ii) The resource officer of the school; and

9 (iii) Any other instructional and support personnel
 10 who are responsible for supervising the juvenile or have a legitimate
 11 interest in the education of the juvenile under the Family Educational Rights
 12 and Privacy Act of 1974, 20 U.S.C. § 1232g et seq.

13 (B) The arrest information shall:

14 (i) ~~be~~ Be treated as confidential information; and

15 (ii) ~~shall not~~ Not be disclosed by the
 16 superintendent or the designee of the superintendent to any person other than
 17 ~~the principal and resource officer~~ a person listed in subdivision (i)(2)(A)
 18 of this section, who shall also maintain the information as confidential.

19 (C) A person listed in subdivision (i)(2)(A) of this
 20 section who is notified of the arrest or detention of a juvenile by the
 21 superintendent or the designee of the superintendent shall maintain the
 22 confidentiality of the information he or she receives.

23 (3) The arrest information shall be used by the school only for
 24 the limited purpose of obtaining services for the juvenile or to ensure
 25 school safety.

26
 27 SECTION 4. Arkansas Code § 9-27-309(k) and (l), concerning the
 28 confidentiality of records under the Arkansas Juvenile Code of 1989, are
 29 amended to read as follows:

30 (k) Information regarding the arrest or detention of a juvenile and
 31 related proceedings under this subchapter shall be confidential unless the
 32 exchange of information is:

33 (1) For the purpose of obtaining services for the juvenile, to
 34 ensure school safety, or to ensure public safety;

35 (2) Reasonably necessary to achieve one (1) or ~~both~~ more
 36 purposes; and

(3) Under a written order by the circuit court.

(1)(1) The information may be given only to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the juvenile or his or her parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;

(G) A Department of Health representative; ~~or~~

(H) The juvenile's attorney ad litem or other court-appointed special advocate; or

(I)(i) A school superintendent or the designee of the superintendent of the school district in which the juvenile is enrolled or transfers.

(ii) A school superintendent or the designee of the superintendent of the school district in which the juvenile is enrolled shall immediately notify the following persons of information he or she obtains under subsection (k) of this section:

(a) The principal of the school;

(b) The resource officer of the school; and

(c) Any other instructional and support personnel who are responsible for supervising the juvenile or have a legitimate interest in the education of the juvenile under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g et seq.

(2) The persons listed in subdivision (1)(1) of this section may meet to exchange information, to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, to ensure school safety, and to ensure public safety.

(3) The juvenile and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (1)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records,

1 and related information shall remain confidential unless the juvenile's
 2 parent or legal guardian waives confidentiality in writing specifically
 3 describing the records to be disclosed between the persons listed in
 4 subdivision (1)(1) of this section and the purpose for the disclosure.

5 (5) Persons listed in subdivision (1)(1) of this section who
 6 exchange any information referred to in this section may be held civilly
 7 liable for disclosure of the information if the person does not comply with
 8 limitations set forth in this section.

9
 10 SECTION 5. Arkansas Code § 9-27-309(m)(1)-(3), concerning the
 11 confidentiality of records under the Arkansas Juvenile Code of 1989, are
 12 amended to read as follows:

13 (m)(1) When a court orders that a juvenile have a safety plan that
 14 restricts or requires supervised contact with another juvenile or juveniles
 15 as it relates to student or school safety, the court shall direct that a copy
 16 of the safety plan and a copy of the court order regarding the safety plan
 17 concerning student or school safety be provided to the school superintendent
 18 and principal ~~where the~~ of the school district in which the juvenile is
 19 enrolled or transfers.

20 (2) When a court order amends or removes any safety plan
 21 outlined in subdivision (m)(1) of this section, the court shall direct that a
 22 copy of the safety plan and a copy of the court order regarding the safety
 23 plan, as it relates to student or school safety, be provided to the school
 24 superintendent and principal ~~where the~~ in which the juvenile is enrolled or
 25 transfers.

26 (3)(A) The superintendent or principal of the school district in
 27 which the juvenile is enrolled shall provide verbal notification only to
 28 school officials who are necessary to implement the safety plan as ordered by
 29 the court to ensure student safety.

30 (B) This verbal notification may only be provided to
 31 assistant principals, counselors, resource officers, and the school ~~employee~~
 32 ~~who is~~ employees who are primarily responsible for the supervision of the
 33 juvenile or responsible for the juvenile learning environment ~~where the~~
 34 ~~juvenile is currently~~ of the juvenile in the school district in which the
 35 juvenile is enrolled, and bus drivers, if applicable.

36