

1 State of Arkansas As Engrossed: H3/13/19 H3/18/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1551

4

5 By: Representative Eubanks

6

7

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.

13

14

15

Subtitle

16

TO AMEND THE LAW CONCERNING THE

17

CONFIDENTIALITY OF RECORDS UNDER THE

18

ARKANSAS JUVENILE CODE OF 1989; AND

19

CONCERNING SCHOOL NOTIFICATION OF CERTAIN

20

OFFENSES FOR WHICH A MINOR IS ADJUDICATED

21

OR CONVICTED.

22

23

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, in which the minor is enrolled, or from which the minor receives
3 services.

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

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

9 (2) Kidnapping under § 5-11-102;

10 (3) Battery in the first degree under § 5-13-201;

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

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

14 (6) The unlawful possession of a handgun under § 5-73-119.

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

18 (e)(1) An arresting agency shall orally notify the superintendent or
19 the designee of the superintendent of the school district to which the minor
20 transfers, in which the minor is enrolled, or from which the minor receives
21 services of the arrest or detention of the minor for one (1) or more of the
22 following offenses:

23 (A) An offense involving a deadly weapon under § 5-1-102;

24 (B) Kidnapping under § 5-11-102;

25 (C) Battery in the first degree under § 5-13-201;

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

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

29 (F) The unlawful possession of a handgun under § 5-73-119.

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

33 (3)(A) The superintendent of the school district in which the
34 minor is enrolled or from which the minor receives services shall then
35 immediately notify:

36 (i) The principal of the school;

1 (ii) The resource officer of the school; and
2 (iii) Any other school official with a legitimate
3 educational interest in the minor.

4 (B) The arrest information shall:

5 (i) Be treated as confidential information; and
6 (ii) Not be disclosed by the superintendent or the
7 designee of the superintendent to any person other than a person listed in
8 subdivision (e)(3)(A) of this section.

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

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

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

20 (1) Authorized by a written order of the juvenile division of
21 circuit court;

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

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

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

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

30 (B) Reasonably necessary to achieve one (1) or both
31 purposes; and

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

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

35 (A) A school counselor;

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

- 1 (C) A law enforcement officer;
2 (D) A spiritual representative designated by the minor or
3 his or her parents or legal guardian;
4 (E) A Department of Human Services caseworker;
5 (F) A community-based provider designated by the court,
6 the school, or the parent or legal guardian of the minor;
7 (G) A Department of Health representative;
8 (H) The minor's attorney or other court-appointed special
9 advocate; or
10 (I)(i) A school superintendent or the designee of the
11 superintendent of the school district to which the minor transfers, in which
12 the minor is enrolled, or from which the minor receives services.
13 (ii) A school superintendent or the designee of the
14 superintendent of the school district in which the minor is enrolled or from
15 which the minor receives services shall immediately notify the following
16 persons of information he or she obtains under subdivision (g)(1) of this
17 section:
18 (a) The principal of the school;
19 (b) The resource officer of the school; and
20 (c) Any other school official with a
21 legitimate educational interest in the minor.
22 (3) A person listed in subdivision (g)(2) of this section may
23 meet to exchange information, to discuss options for assistance to the minor,
24 to develop and implement a plan of action to assist the minor and to ensure
25 school safety.
26 (4) The minor and his or her parent or legal guardian shall be
27 notified within a reasonable time before a meeting and may attend any meeting
28 of the persons referred to in subdivision (g)(2) of this section when three
29 (3) or more individuals meet to discuss assistance for the minor or the
30 protection of the school due to the behavior of the minor.
31 (5) Medical records, psychiatric records, psychological records,
32 and related information shall remain confidential unless the minor's parent
33 or legal guardian waives confidentiality in writing specifically describing
34 the records to be disclosed between the persons listed in subdivision (g)(2)
35 of this section and the purpose for the disclosure.
36 (6) A person listed in subdivision (g)(2) of this section who

1 exchanges any information referred to in this section may be held civilly
2 liable for disclosure of the information if the person does not comply with
3 the limitations set forth in this section.

4 (h)(1) When a court orders a safety plan for a minor that restricts or
5 requires supervised contact with another minor as it relates to student or
6 school safety, the court shall direct that a copy of the safety plan and a
7 copy of the court order regarding the safety plan concerning student safety
8 be provided to the school superintendent, the designee of the superintendent,
9 and the principal of the school district to which the minor transfers, in
10 which the minor is enrolled, or from which the minor receives services.

11 (2) When a court order amends or removes any safety plan
12 outlined in subdivision (h)(1) of this section, the court shall direct that a
13 copy of the safety plan and a copy of the court order regarding the safety
14 plan, as it relates to student safety, be provided to the school
15 superintendent, or his or her designee, and the principal of the school
16 district to which the minor transfers, in which the minor is enrolled, or
17 from which the minor receives services.

18 (3) A school official who receives a court order and safety plan
19 or information concerning the court order and safety plan shall:

20 (A) Keep the information confidential and shall sign a
21 statement not to disclose the information concerning the court order and
22 safety plan that shall be kept by the superintendent or principal along with
23 the court order and safety plan;

24 (B) Keep the information confidential and shall not
25 disclose the information to a person not listed in subdivision (g)(2) of this
26 section;

27 (C) Include the information in the permanent educational
28 records of the minor; and

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

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

36 (iii) However, the local education agency shall not

1 under any circumstance release, disclose, or make available for inspection to
2 the public, any college, university, institution of higher education,
3 vocational or trade school, or any past, present, or future employer of the
4 student the court order or safety plan portion of a student record of the
5 minor.

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

10
11 SECTION 2. Arkansas Code § 9-27-309(f) and (g), concerning the
12 confidentiality of records under the Arkansas Juvenile Code of 1989, are
13 amended to read as follows:

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

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

19 (2) The school superintendent of the school district ~~in which~~
20 ~~the juvenile is currently enrolled~~ or the designee of the school
21 superintendent of the school district to which the juvenile transfers, in
22 which the juvenile is enrolled, or from which the juvenile receives services.

23 (g) ~~When a juvenile is adjudicated delinquent for an offense for which~~
24 ~~he or she could have been charged as an adult or for unlawful possession of a~~
25 ~~handgun, § 5-73-119, the prosecuting attorney shall notify the school~~
26 ~~superintendent of the school district in which the juvenile is currently~~
27 ~~enrolled~~ The prosecuting attorney shall notify the school superintendent or
28 the designee of the school superintendent of the school district to which the
29 juvenile transfers, in which the juvenile is enrolled, or from which the
30 juvenile receives services if the juvenile is adjudicated delinquent for:

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

32 (2) Kidnapping under § 5-11-102;

33 (3) Battery in the first degree under § 5-13-201;

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

35 (5) First, second, third, or fourth degree sexual assault under
36 §§ 5-14-124 – 5-14-127; or

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

2
3 SECTION 3. Arkansas Code § 9-27-309(i), concerning the confidentiality
4 of records under the Arkansas Juvenile Code of 1989, is amended to read as
5 follows:

6 (i)(1) If a juvenile is arrested for unlawful possession of a firearm
7 under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or
8 battery in the first degree under § 5-13-201, the arresting agency shall ~~as~~
9 ~~soon as practical and with all reasonable haste cause written notification of~~
10 ~~the arrest to be given to the superintendent of the school district in which~~
11 ~~the juvenile is currently enrolled~~ orally notify the superintendent or the
12 designee of the superintendent of the school district to which the juvenile
13 transfers, in which the juvenile is enrolled, or from which the juvenile
14 receives services of the offense for which the juvenile was arrested or
15 detained within twenty-four (24) hours of the arrest or detention or before
16 the next school day, whichever is earlier.

17 (2)(A) The superintendent of the school district to which the
18 juvenile transfers, in which the juvenile is enrolled, or from which the
19 juvenile receives services shall then immediately notify the principal and
20 the resource officer of the school in which the juvenile is currently
21 enrolled.;

22 (i) The principal of the school;

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

24 (iii) Any other school official with a legitimate
25 educational interest in the juvenile.

26 (B) The arrest information shall:

27 (i) be Be treated as confidential information; and

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

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

36 (3) The arrest information shall be used by the school only for

1 the limited purpose of obtaining services for the juvenile or to ensure
2 school safety.

3

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

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

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

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

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

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

16 (A) A school counselor;

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

18 (C) A law enforcement officer;

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

21 (E) A Department of Human Services caseworker;

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

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

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

27 (I)(i) A school superintendent or the designee of the
28 superintendent of the school district to which the juvenile transfers, in
29 which the juvenile is enrolled, or from which the juvenile receives services.

30 (ii) A school superintendent or the designee of the
31 superintendent of the school district in which the juvenile is enrolled or
32 from which the juvenile receives services shall immediately notify the
33 following persons of information he or she obtains under subsection (k) of
34 this section:

35 (a) The principal of the school;

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

1 (c) Any other school official with a
2 legitimate educational interest in the juvenile.

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

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

12 (4) Medical records, psychiatric records, psychological records,
13 and related information shall remain confidential unless the juvenile's
14 parent or legal guardian waives confidentiality in writing specifically
15 describing the records to be disclosed between the persons listed in
16 subdivision (1)(1) of this section and the purpose for the disclosure.

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

21
22 SECTION 5. Arkansas Code § 9-27-309(m)(1)-(3), concerning the
23 confidentiality of records under the Arkansas Juvenile Code of 1989, are
24 amended to read as follows:

25 (m)(1) When a court orders that a juvenile have a safety plan that
26 restricts or requires supervised contact with another juvenile or juveniles
27 as it relates to student or school safety, the court shall direct that a copy
28 of the safety plan and a copy of the court order regarding the safety plan
29 concerning student or school safety be provided to the school superintendent
30 and principal where the of the school district to which the juvenile
31 transfers, in which the juvenile is enrolled, or from which the juvenile
32 receives services.

33 (2) When a court order amends or removes any safety plan
34 outlined in subdivision (m)(1) of this section, the court shall direct that a
35 copy of the safety plan and a copy of the court order regarding the safety
36 plan, as it relates to student or school safety, be provided to the school

1 superintendent ~~superintendent and principal where the~~ of the school district
2 to which the juvenile transfers, in which the juvenile is enrolled, or from
3 which the juvenile receives services.

4 (3)(A) The superintendent or principal of the school district in
5 which the juvenile is enrolled or from which the juvenile receives services
6 shall provide verbal notification only to school officials who are necessary
7 to implement the safety plan as ordered by the court to ensure student
8 safety.

9 (B) This verbal notification may only be provided to
10 assistant principals, counselors, resource officers, and the school ~~employee~~
11 ~~who is~~ employees who are primarily responsible for the supervision of the
12 juvenile or responsible for the juvenile learning environment ~~where the~~
13 ~~juvenile is currently~~ of the juvenile in the school district in which the
14 juvenile is enrolled or from which the juvenile receives services, and bus
15 drivers, if applicable.

16
17 /s/Eubanks
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36