

KIDS AT THE CAPITOL

2013 LEGISLATIVE SUMMARY



HISTORIC AND NOT

The 2013 session of the Arkansas General Assembly was an historic one. Republican legislators took over both chambers for the first time since Reconstruction. Lawmakers passed sweeping health coverage legislation, known as the Private Option, guaranteed to change the way Arkansans access health care in their communities. But some things were the same as ever. Advocates and citizen groups rallied at the Capitol on multiple occasions to support or oppose legislation they believed to be helpful or harmful to this state's citizens. Lawmakers came together – on some issues – to make the right choice for the people of Arkansas. And, as we have for the last 35 years, Arkansas Advocates for Children and Families served as a committed and consistent voice for the state's moderate- and low-income children and families who don't have lobbyists or strategic plans or clout in the marble halls of the Capitol.

Things got off to a slow start. Bigger issues like tax cuts, health care, and some education issues were not addressed until much later in the session as lawmakers dealt with a host of social issues – placing restrictions on abortion rights and lifting them from gun owners. New legislators – on both sides of the aisle – needed time to adapt to their surroundings, learn about the history of key issues facing the state, and gather as much information as possible on the most important votes they'd face. Eventually though, the big issues did make their way to the top of the agenda.

The idea of extending Medicaid to more Arkansans – those who make too much to qualify for Medicaid and too little to qualify for subsidies under the Affordable Care Act – at first appeared to be a non-starter for Republicans in both chambers. However, after discussions with the Obama administration, Gov. Mike Beebe was able to gain preliminary approval of a plan that would allow low-income Arkansans to buy private insurance plans with Medicaid dollars. This was a compromise both sides could coalesce around, although a hard-fought one. Ultimately, lawmakers decided to do what was best for the state despite their political differences and made health coverage a possibility for 250,000 Arkansans who had no other affordable option before their vote.

Although the decision to extend Medicaid was one of the biggest and will surely be one of the most remembered measures to come out of the 89th General Assembly, there were many other bills that will have a lasting impact on how the state conducts business. In the final hours of the session lawmakers passed almost \$150 million in tax cuts, as part of a grand bargain on the health coverage deal, that will have a significant impact on the state budget and, potentially, put some of our favorite things – pre-K funding, child welfare programs, juvenile justice reforms – at risk.

AACF worked hard this session to make sure children and families were on legislators' minds as they cast their votes. We always say, "We couldn't have done it without your help," which is absolutely true. Without our supporters, board members, volunteers, partner organizations, and interns, our work would not be possible. But this session, we had some help – from you. Thanks to our new e-advocacy software, we were able to alert our contact list when important votes came up, encouraging folks to email or call their lawmaker to let them know how they felt about an issue. We sent out 26 "Action Alerts" on a variety of issues and the response was incredible. Our supporters sent out over 760 emails directly to their lawmakers through our system. This was a unique opportunity for AACF because we went from simply sharing information with our audiences to engaging them. That's something we look forward to doing more of as the details of the Private Option are worked out and as next year's fiscal session rolls around.

This General Assembly will be remembered for years to come. The whole political make-up of our state government went through a major shift, yet lawmakers were still able to work together and, as a result, Arkansans gained access to affordable health coverage. Legislators continued to make changes to the way

we educate our children. And our state's tax code underwent a significant change, the effects of which warrant intense scrutiny for years to come. Through all of it, Arkansas Advocates for Children and Families made the case for investing in our future and supporting all our state's families.

HEALTH

Decisions about implementing the Patient Protection and Affordable Care Act (ACA) in Arkansas loomed large during the 2013 session. The ACA's offer of near-universal coverage at a small cost to states has the potential to reduce the number of uninsured Arkansas children drastically and help families access the care they need. After the Supreme Court left states to decide whether or not to strengthen their Medicaid programs to cover low-income working adults, Arkansas had to decide whether to cover 250,000 of its residents, also a budget win for the state, or leave thousands without access to health coverage.

Thankfully, Arkansas made the right decision and chose to accept federal funds to cover low-income adults, including 80,000 parents of children eligible for ARKids First. Arkansas is the first state in the South to do so. However, the bipartisan solution that lawmakers developed allows Arkansas to use Medicaid funds to purchase private health insurance for low-income adults, a non-traditional answer to what the federal government may have intended. Acts 1497 and 1498 were identical bills that outline the framework for what became known as the "Private Option." AACF was part of a broad coalition of stakeholders that supported the Private Option, including the Arkansas State Chamber of Commerce, Arkansas Hospital Association, Arkansas Children's Hospital, the Arkansas Public Policy Panel, the American Cancer Society Cancer Action Network, and various other groups focused on health and the state budget.

Act 1496 provided the appropriation for the Private Option and was the most contentious aspect of the decision, in part because many appropriations require super majority support, 75 votes in the House and 27 votes in the Senate, to pass. In the end, 77 representatives and 28 senators voted for the Private Option, signaling wide support for covering more Arkansas families earning less than 138 percent of the federal poverty level (about \$31,800 for a family of four). One concern we have about the bill is that it transfers children covered by ARKids First B to private insurance coverage with their parents starting in 2015. While it's good for full families to have coverage, we want to make sure children keep the protections offered by ARKids First B. Regardless, studies indicate that passage of the Private Option could mean up to a 40 percent reduction in the number of uninsured children in Arkansas as families gain permanent coverage, continuing our national leadership in covering kids.

Lawmakers also had to decide what type of health insurance marketplace Arkansas would have in 2015 and beyond. The ACA requires states to have a functioning marketplace ready by January 1, 2014, to enable uninsured adults earning more than 138 percent of the federal poverty level to purchase private health insurance with the help of sliding-scale federal subsidies that make plans affordable. Arkansas did not choose to establish a state-run marketplace for 2014, so the federal government is implementing it in



AACF staff members Anna Strong, Susana O'Daniel, and Brett Kincaid with Gov. Mike Beebe at the signing ceremony for the Private Option bill.

partnership with the state. Act 1500 moves Arkansas toward running its own marketplace in years 2015 and beyond, with the state again being a leader among southern states who have tended toward accepting the default federal option. The marketplace will have a non-profit board of directors that includes at minimum two consumer representatives as well as state agency representation. Because the Medicaid-eligible adults covered through the private option will have plans from this marketplace, it's important for DHS officials to be able to ensure protections remain in place for low-income families and children.

Related to the new marketplace, Act 1439 requires licensing of Navigators, Guides, and Certified Application Counselors. These will be the more than 500 outreach and education specialists who help uninsured Arkansans enroll in health care coverage through the marketplace. The license will ensure that the workers are culturally competent and that they understand the ins and outs of the marketplace, Medicaid, and ARKids First to enroll families in the coverage that best meets their needs.

Other legislation. Several other bills related to children's health passed; most were driven by partner organizations with support from AACF.

- Newborn screening was strengthened by two bills. Act 768 requires newborns to have a pulse-oximetry test to detect congenital heart defects, and Act 428 expands newborn screening to include a test for severe combined immune deficiency syndrome, or SCID.
- Act 414 creates the "Public School Health Services Advisory Committee," which will examine children's health needs and the professionals who treat children in schools. The report is due in the fall of 2014 to the Senate Education Committee.
- Acts 1451 and 1099 regulate the use of e-cigarettes by Arkansas children. The former limits the sale of e-cigarettes to minors, and the latter prohibits their use on school campuses.

Lastly, legislation that would have reversed the progress made on fluoridated water systems in 2011 failed. HB 1312, HB 1038, and SB 255 could have exempted water systems serving more than 5,000 people from the requirement to fluoridate their water systems as required by 2011 legislation. Fluoridation is one of the best ways to prevent poor oral health in children, including cavities.

EDUCATION

There were numerous battles over the future of education policy during the session, resulting in casualties on all sides. Those who pushed a market-based, school choice agenda at the expense of public schools had mixed success after meeting staunch resistance from the education establishment and other advocates. On a different front, AACF and the Opportunity to Learn (OTL) Campaign worked hard to represent the interests of low-income students in this contentious environment. Unfortunately, we had only mixed success in our efforts to promote reforms that would have closed the achievement gap for low-income students.

Home Visiting Programs. AACF helped pass Act 528, "An Act to Improve the Health and Stability of Arkansas Families and to Strengthen Voluntary Home Visitation Programs." Voluntary home visiting programs match parents with trained professionals to provide information and support during pregnancy and throughout the child's first few (and very formative) years. This is a big win for Arkansas kids and families. The act sets up one of the strongest home visiting systems in the country by ensuring investments are directed to programs that are proven to achieve successful results for children and families. The act also mandates that home visiting programs track and measure outcomes such as improvements in maternal and infant health, family self-sufficiency, and school readiness. The law requires that at least

90 percent of Arkansas's funding for home visiting go to support evidence-based or promising programs, ensuring the state will receive solid returns on investment for taxpayers and strong results for participating families. The policy also sets forth a clear process for measuring outcomes across all state-funded home visiting programs.

Student Discipline Policies in the Schools. A bill aimed at curbing disparities in how white and minority students are disciplined at school is now Act 1329. The bill directs the Arkansas Department of Education (ADE) to conduct a study on disparities in school disciplinary policies, and prohibits out of school suspensions because of truancy. The bill does not sanction districts that already show a great disparity.

Parental Involvement. AACF supported our grassroots partner, the Arkansas Public Policy Panel, in legislative efforts to strengthen parent and community involvement in education. Act 1507, the Community Involvement Act, permits school districts to offset costs for community use of school property through joint use agreements. This is intended to remove a barrier for community use that could include after school and summer programs. SB 1064 on Parent Involvement became Act 1423. The bill requires that parent-friendly summaries of the parental involvement plan be provided to parents at the time the plans are finalized.

Dyslexia Screening and Services in the Public Schools. Act 1329 addresses dyslexia, often one of the biggest barriers to grade-level reading. The goal is to help ensure that children with dyslexia have their needs more effectively met by the public school system by requiring better screening and diagnosis, improved intervention and access to services, and access to trained personnel at the state and local levels.

School Poverty Funding. Efforts to reform school poverty funding, also known as NSLA funding, met with mixed success during the session. Act 1467 (HB 1774), the biennial funding update for K-12 education, included a cost of living adjustment (COLA) for student foundation funding and COLA adjustments for three of the four additional adequacy programs. We were disappointed that NSLA funds did not receive a COLA increase as they are, potentially, a key source of funding for pre-K and after-school and summer programs. However, they are seldom used for those purposes. Act 1774, however, was amended to require a study of how NSLA funds are distributed and a narrowed list of eligible uses for these funds prior to the next fiscal session. This amendment signals future legislative intent to more narrowly restrict the use of NSLA funds to proven strategies, the original intent of a senate bill supported by AACF and the OTL Campaign. SB 508 would have restricted some of the uses of NSLA funding for school districts, setting aside more of those funds for pre-K. The bill failed to make it out of committee.



Advocates speak with their legislators at AACF's Kids Count Day at the Capitol.



AACF staff, early education leaders, and Rep. Warwick Sabin attend the bill signing ceremony for the Home Visiting bill.

AACF and the OTL Campaign worked with several education associations to make changes to SB 508 in order to alleviate opponents' concerns about maintaining flexibility in how the funds are spent. However, school superintendents argued against any new restrictions. They also fought SB 811, a bill that would have cut overall NSLA funding, but distributed more of those funds to the schools that needed it most. The end result is that needed reforms were pushed back to at least the fiscal session next January. But, it is almost certain that some cuts will be phased in at that time. It is also likely we could see more stringent restrictions than were proposed in SB 508.

Early Childhood Programs. While no new funding was identified for pre-K, it didn't take the cuts that have been

enacted in many other states in recent years. HB 1777, a bill supported by AACF, was sent to interim study. A pre-K needs assessment will be performed to help build legislative understanding for the value of preschool. It also guarantees that pre-K will be a part of the discussion in the NSLA debate as pre-K is an eligible, and good, use of NSLA funds.

Afterschool and Summer Programs. Efforts to secure funding for the Positive Youth Development Program, which was enacted into law in the 2011 legislative session, were unsuccessful. This issue was a major priority for the OTL Campaign. AACF staff and the Arkansas Out-of-School Network worked tirelessly to track and support the legislation but, in a session devoted to tax-cuts and extending Medicaid, no funding was allocated.

Student's Bill of Rights. AACF supported legislation to create a student's bill of rights and increase local school accountability to students and their parents. The bill met stiff opposition from the education associations and, after several efforts to negotiate a compromise, failed to garner the legislative support needed to become law.

P-12 Education Funding. Education funding was a mixed bag this session. On the good side, the FY 2014 general revenue stabilization allocation for the Public School Fund increased over FY 2013 by \$46.9 million. Adequacy funding for education was one of the few items in the state budget (Medicaid being the other) that received any new significant state general revenue funding for FY 2014. New adequacy funding is solely for increases to adequacy line items of two percent for foundation funding and 1.8 percent for categorical funding (English language learners, alternative learning environments, and professional development). However, there was no funding increase for NSLA categorical funding or any other Public School Fund programs. New programs were added to the appropriation bill but no increased funding was provided. New programs include: youth shelters; school safety and active shooter initiatives; and transportation and truancy officers for a regional alternative learning environment center. Examples of other programs funded through the public school fund budget that did not receive any increases are the ABC (pre-K) program, advanced placement incentives, coordinated school health, distance learning,

and juvenile residential centers and detention centers. At a time when many of these programs, including coordinated school health, are experiencing cuts in federal funding as a result of the sequester, the end result of flat state funding is reduced resources for important programs.

School Choice. AACF, the OTL Campaign, and the education associations joined the Department of Education and the Governor's Office in fighting off vouchers and changes to the structure of the Arkansas State Board of Education proposed by education reform groups promoting school choice agendas. Inter-district school choice legislation passed with few restrictions. It passed despite advice from the Attorney General's Office to wait until the federal appeals court ruled on an appeal of the decision striking down the state's former inter-district choice law. Modest gains were made by the reformers on behalf of charter schools but not everything was successful. A limited one-time source of funds for a single charter school's facility improvements was made available (improvement funds are usually not given to charter schools) and \$5 million is in the Governor's discretionary general improvement distribution for established charter schools. The funding for established charter schools is not likely to be available. Legislation to establish a new and unaccountable charter approval organization/process was so broadly opposed that the bill was never presented. However the compromise still moved charter approval away from the State Board of Education to Department of Education personnel.

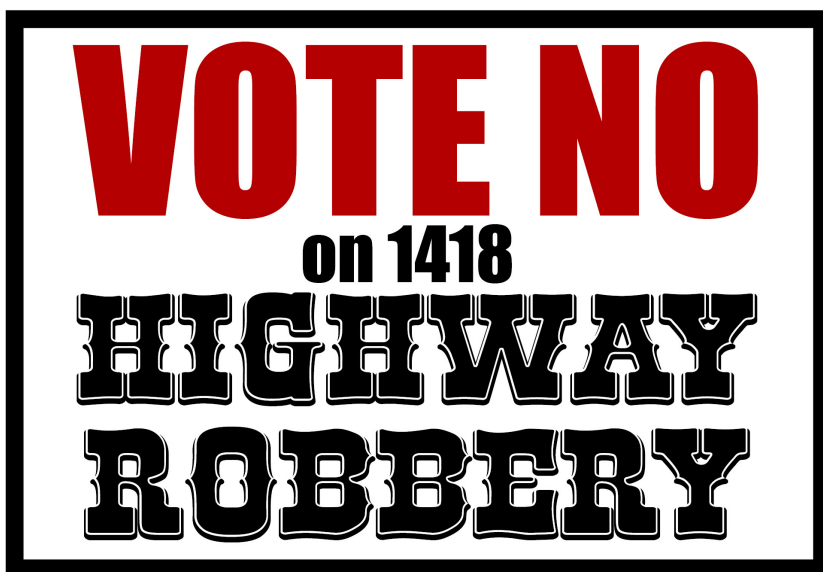
The difference between the philosophies of those who advocate for low-income children and those who support a market-based or competition strategy was especially evident in two bills: Act 1326, the Whole Child – Whole Community Recognition Program, and Act 696, the Letter Grades for Schools bill. Both bills passed, but only one – the Letter Grade Awards bill back by school choice advocates – was guaranteed immediate funding. The Whole Child – Whole Community Recognition Program is based on the premise that a whole child approach to education requires the engagement of the entire community to ensure that each child is healthy, safe, engaged, supported, and challenged. This award would acknowledge those schools that have changed the conversation about education from a focus on narrowly defined academic achievement to one that promotes the development of the whole child.

In contrast, the Letter Grades Awards bill rates and designates schools on the basis of letter grades. Schools with the highest achievement will receive A grades while "failing" schools will receive Fs. While the process to assign grades may include demographic adjustments, it is clear that winners will be rewarded with more resources than they already had. The losers will be labeled as a failure and will not receive any additional resources or intervention to help them improve. This program was given one-time funding of \$10 million.

TAX

The 89th General Assembly presented some unique challenges regarding our economic self-sufficiency work at AACF. We spent much of our time fighting bad tax cut ideas and various proposals to divert state general revenue to pet projects rather than quality early childhood education, after school programs, and child welfare investments. Too many lawmakers entered the Capitol this year promising "reform" that would undermine all the progress we have made.

Our most significant victory was beating back the Highway Robbery Bill (HB 1418). The bill would have diverted tax dollars to roads and highways and gutted future funding of programs that impact our communities like child care and pre-K services, higher education, and public safety. While we certainly agree that our roads and highways are important to Arkansas, we do not believe they are more important than programs that directly impact our children. AACF led a coalition of supporters including K-12 educators,



Materials designed by AACF helped shape the debate on tax issues.

the hands of lawmakers by automatically capping the state budget each year, regardless of the circumstance. This type of budget gimmick has failed in every other state where it has been tried lately, and thanks largely to our efforts, Arkansas stood tall against it, too. Budget decisions require flexibility to meet changing demands. This bill would have made it impossible for Arkansas lawmakers to do that.

Even with these wins, the Arkansas Legislature still passed a hefty tax cut package including 16 bills that reduce state tax revenue – that did little to nothing to help low- and middle- income Arkansans. Even though the cuts expected during the upcoming fiscal year are not big compared to future years (the cuts will create a \$10 million loss for general revenue the first year), these tax cuts will continue to increase in years to come, leading to \$141 million in cuts to general revenue in FY2016. The legislature also failed to pass two measures—a bill sponsored by Rep. Love to create a state earned income tax credit (EITC) and an income tax reform bill by Rep. Sabin—that would have helped low- and middle- income families.

THE STATE BUDGET

Act 1517 increases the state FY2014 general revenue budget for state agencies--also known as the “net available for distribution”--to \$4.92 billion, an increase of nearly \$197.4 million, or 4.2 percent above the current year budget of \$4.73 billion. There is an additional amount of \$18.9 million that has been set aside for rainy day funds and other uses. The state general revenue budget prioritizes spending into three categories: A, B, and C. Category A, which includes the bulk of the new funding at \$4.8 billion, is to be funded first, followed by category B at \$131.7 million, and category C at \$6.6 million. The state general revenue forecast for FY2014, as revised on May 1, is expected to fully fund all three categories.

Of the \$197.4 million in new state general revenue spending forecasted for FY2014, the bulk goes for Medicaid spending (an increase of \$84.2 million or 10.5 percent) and the Public School Fund (\$46.9 million or 2.3 percent). Other notable increases in the state general revenue budget include Corrections (\$14.2 million or 4.7 percent), Community Corrections (\$6.9 million or 9.9 percent), and the various Institutions of Higher Education (\$7.4 million or 1.0 percent). Critical parts of the budget for children and families that received flat funding or took cuts included the Division of Children and Family Services, a.k.a., the child welfare system, which took a cut of \$44,000; the Division of Youth Services/Juvenile Justice, which received no increase; and the Department of Health (cut of \$900,000). Funding for two education programs critical to at-risk students, the Arkansas Better Chance Pre-K Program and poverty funding (NSLA), also received no increase. When programs are flat-funded, they are actually falling

two-year and four-year colleges, and social justice advocates all dedicated to defeating the bill. Despite being authored by the chairman of the House Public Transportation Committee, we successfully kept the bill from advancing to the full House. This signaled a major victory for responsible budgeting while showing partners just how important it was to work together.

Earlier in the legislative session, Arkansas Advocates led the fight to defeat HB 1041, which would have arbitrarily limited our state’s ability to invest in programs that support economic growth. This Spending Caps Bill would have taken decision-making authority regarding the state budget out of

behind. This is because program expenses increase with the cost of living, but funding does not. The state general revenue budget, of course, only includes agency spending paid for by state revenues, and does not fully take into account, if at all, the potential impact of recent federal budget cuts due to sequestration.

Act 1519 allocates funding in the General Improvement Fund (GIF), which consists of surplus funds and is used mostly to pay for special, one-time projects or needs. It gives first priority to 26 projects and programs, including \$107.7 million for Medicaid and \$30 million for projects at the state's two-year and four-year institutions of higher education. Any funding remaining in the GIF after those 26 projects/programs are funded can be used to pay for projects identified by the governor and the General Assembly, with 59.3 percent of the remaining funding going to the governor's projects and 40.7 percent going to projects identified by the legislature. It is anticipated that the governor will have up to \$102 million to spend and the legislature up to \$70 million to spend. Not all projects outlined in Act 1519 will be funded because of limited GIF funding.



Gov. Mike Beebe speaks at a rally urging lawmakers to support extending affordable health coverage to all Arkansans.

JUVENILE JUSTICE

Act 1490 was enacted in response to the U.S. Supreme Court's ruling that *mandatory* prison sentences of life without parole for juvenile offenders was unconstitutional. The act changes the current statute to read that defendants who are less than 18 years of age can still be sentenced to life imprisonment without parole, however, the sentence is not mandatory. Defendants may also be sentenced to life with the possibility of parole after a minimum of 28 years. However, shortly after the legislative session ended, the Arkansas Supreme Court ruled on the Kuntrell Jackson case. This Arkansas case originally led the U.S. Supreme Court to declare mandatory sentences of life without parole for juveniles were unconstitutional. The Arkansas court determined that two Arkansas juveniles serving life without parole should be re-sentenced by jury trial for a Y-felony eligible for parole after 10-40 years. So Act 1490 may soon be found to be unconstitutional.

Act 321 created additional requirements and timelines for the Division of Youth Services (DYS) to file with Legislative Council and notify service providers of all contracts or any modification or amendments of existing contracts. It also requires that provider comments be submitted as part of the legislative review by the Subcommittee on Administrative Rules and Regulations of the Legislative Council. There is concern that this additional process will hamper the timely implementation of contracts or needed modifications before services are provided to court-involved youth and their families.

Act 1478 clarifies that the Arkansas State Claims Commission has no jurisdiction over claims against DYS for acts committed by juveniles. DYS was one of only a few state agencies that were not exempt from commission claims. This follows a recent \$1 million claim awarded by the commission against DYS, funds that came directly out of current operating expenses.



University of Arkansas student Zessna Garcia Rios talks about the importance of tuition equity in a brief video produced by AACF.

Act 1513 created the Arkansas Coalition for Juvenile Justice Board to supervise funds under the Juvenile Justice and Delinquency Prevention (JJDP) Act. This includes the oversight of DYS support staff who are paid with those funds and who provide DYS notice of its failure to comply with the core requirements of the JJDP Act.

Arkansas Advocates' effort to broaden reforms of the juvenile justice system through enactment of the proposed Close to Home Act (SB 335) was met with doubt and strong resistance from community-based providers. The proposal sought to provide effective community-based alternatives so that incarceration would be limited to those juveniles that pose a significant threat to public safety and provide local communities more input on creating needed services. It passed out of the Senate Judiciary Committee but failed to get the necessary votes in the Senate.

IMMIGRATION

For the first session in recent memory, lawmakers filed no punitive bills that would take rights or services away from Arkansas's immigrant families, an encouraging development that we hope becomes the norm. But we were disappointed that a state tuition equity bill failed in committee.

Sen. Joyce Elliott's SB 915 would have allowed all Arkansas high school graduates who attended school for three or more years to pay in-state tuition at public colleges and universities. It was nicknamed the "DREAM" Act because it would have allowed many undocumented high school graduates to achieve their goals of obtaining a higher education. The legislation had the backing of top higher education officials and the Arkansas State Chamber of Commerce, but it didn't pass the Senate Education Committee. Even if the U.S. Congress passes immigration reforms at the federal level, Arkansas will still need to change state policy to equalize tuition levels.

CHILD WELFARE

One of the best pieces of child welfare legislation this session was the Division of Children and Family Service's bill (Act 478) to allow foster children to be placed with fictive kin in a provisional foster home pending their home being opened as a regular foster home. Currently, children can only be placed with relatives in provisional foster homes. Fictive kin are adults who the child knows well and have played a positive role in the child's life, such as neighbors, godparents, and family friends. This is very important for foster children because it means they can be directly placed with fictive kin instead of being placed in another home until the fictive kin's home is approved as a foster home.

Act 426 extends the time frame for DCFS and the Arkansas State Police to investigate child maltreatment cases from 30 to 45 days. An additional extension of 15 days may be permitted. DCFS and the State Police must promulgate rules pertaining to the extension of time. Even though it is very important that investigations are conducted in a timely manner, in some cases, DCFS and the State Police are waiting on information from other agencies and sources in order to make a final determination of whether the alleged incident was true or unfounded. Services should still be given to the family during the investigation period.

Other Legislation. Act 1006 says the Child Abuse Hotline will no longer accept reports of educational neglect from a school unless the school has complied with the laws pertaining to excessive absences. SB1008 did not become law, but was recommended for an interim study. The bill calls for the parent counsel program, which provides legal representation for parents in dependency-neglect cases, to be moved from the Administrative Office of the Courts to the Arkansas Public Defender Commission. It also calls for the Ad Litem program, which provides legal representation for children in dependency-neglect cases, to be moved from the Administrative Office of the Courts to the Arkansas Child Abuse/Rape/Domestic Violence Commission.



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