

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 702

5 By: Senator Luker
6

For An Act To Be Entitled

8 AN ACT TO ASSURE DUE PROCESS AND PROVIDE
9 ADMINISTRATIVE SIMPLIFICATION IN DEPARTMENT OF HUMAN
10 SERVICES ADJUDICATIONS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO ASSURE DUE PROCESS AND PROVIDE
14 ADMINISTRATIVE SIMPLIFICATION IN
15 DEPARTMENT OF HUMAN SERVICES
16 ADJUDICATIONS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 12-12-1715(d) is repealed:

23 ~~(d)(1) When the department conducts an administrative hearing, the~~
24 ~~chief counsel of the department may require the attendance of witnesses and~~
25 ~~the production of books, records, or other documents through the issuance of~~
26 ~~a subpoena if the testimony or information is necessary to adequately present~~
27 ~~the position of the department or the alleged offender in a report.~~

28 ~~(2) Failure to obey the subpoena may be deemed a contempt and is~~
29 ~~punishable accordingly.~~
30

31 SECTION 2. Arkansas Code § 12-18-802 is amended to read as follows:

32 12-18-802. Subpoenas - ~~Form~~ Service upon a child.

33 ~~(a) When the Department of Human Services conducts an administrative~~
34 ~~hearing, the chief counsel of the department may require the attendance of~~
35 ~~witnesses and the production of books, records, or other documents through~~
36 ~~the issuance of subpoenas when that testimony or information is necessary to~~



1 adequately present the position of the department, the investigating agency,
2 or the alleged offender.

3 (b) Failure to obey the subpoena may be deemed contempt, punishable
4 accordingly.

5 (c) Requests for subpoenas shall be granted by the chief counsel of
6 the department or a designee if the testimony or documents desired are
7 considered necessary and material without being unduly repetitious of other
8 available evidence.

9 (d) Subpoenas issued pursuant to the authority of the chief counsel of
10 the department shall be substantially in the following form:

11 "The State of Arkansas to the Sheriff of _____ County:
12 You are commanded to subpoena (name) _____, (address) _____,
13 to attend a proceeding before the Department of Human Services to be held at
14 _____ on the day of _____, 20 _____,
15 at _____ m., and testify and/or produce the following books, records, or
16 other documents, to wit: in a matter of (style of proceeding) _____
17 to be conducted under the authority of _____. WITNESS
18 my hand this _____ day of _____, 20 _____.
19 _____ Chief Counsel or designee, Department of Human Services".

21 (e)(1) Subpoenas issued under this section shall be served in the
22 manner as now provided by law, returned, and a copy made and kept by the
23 department.

24 (2) The fees and mileage for officers serving the subpoenas and
25 witnesses answering the subpoenas shall be the same as now provided by law.

26 (f) Witnesses duly served with subpoenas issued pursuant to the
27 authority provided in this section who refuse to testify or give evidence may
28 be cited on affidavit through application of the chief counsel of the
29 department to the Pulaski County Circuit Court or any circuit court of the
30 state where the subpoenas were served.

31 (g) If any child served with a subpoena to be a witness in an
32 administrative hearing is a party to an open dependency-neglect or family in
33 need of services case, the child's attorney ad litem shall be provided a copy
34 of the subpoena.

35
36 SECTION 3. Arkansas Code § 20-10-208(g) is repealed.

1 ~~(g)(1) At the request of either party, the hearing officer retained by~~
2 ~~the department may subpoena witnesses and require the production of~~
3 ~~documentary evidence.~~

4 ~~(2) Upon failure of a person without lawful excuse to obey a~~
5 ~~subpoena or to give testimony, application may be made to the circuit court~~
6 ~~in the county in which the hearing is to be held for a court order compelling~~
7 ~~compliance.~~

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9 SECTION 4. Arkansas Code § 20-76-103 is repealed.

10 ~~20-76-103. Use of subpoenas in hearings on benefit determinations.~~

11 ~~(a) The Chief Counsel of the Department of Human Services is~~
12 ~~authorized to require the attendance of witnesses and the production of~~
13 ~~books, records, or other documents through the issuance of subpoenas when the~~
14 ~~testimony or information is necessary to adequately present the position of~~
15 ~~the Department of Human Services when making fair hearing determinations or~~
16 ~~conducting investigations relating to public assistance benefits.~~

17 ~~(b) Subpoenas issued pursuant to the authority of the chief counsel~~
18 ~~shall be substantially in the following form:~~

19 ~~"The State of Arkansas to the Sheriff of~~
20 ~~County: You are commanded to subpoena (name)~~
21 ~~.(address), to~~
22 ~~attend a proceeding before the Arkansas Department of Human Services to be~~
23 ~~held at on the~~
24 ~~. day of, 20~~
25 ~~., and testify and/or produce the following books, records, or other~~
26 ~~documents, to wit:~~
27 ~~., in the matter of (style of proceeding)~~
28 ~~., being conducted under the authority of~~
29 ~~.~~

30 ~~WITNESS my hand this day of~~
31 ~~., 20~~

32
33 ~~.~~
34 ~~Chief Counsel, Department of Human Services~~

35
36 ~~(c) Subpoenas provided for in this section shall be served in the~~

1 manner as now provided by law and returned and a record made and kept by the
2 department. The fees and mileage of officers serving the subpoenas and
3 witnesses in answer to subpoenas shall be the same as now provided by law.

4 (d) Applicants and recipients of public assistance benefits who
5 request fair hearings on determinations made by the department and other
6 parties to administrative adjudications of the department may request
7 issuance of subpoenas by the chief counsel. These requests for subpoenas
8 shall be granted by the chief counsel if the testimony or documents desired
9 are considered necessary and material without being unduly repetitious of
10 other available evidence.

11 (e) Persons duly served with subpoenas issued pursuant to the
12 authority provided in this section who shall refuse to testify or produce
13 books, records, or documents may be cited on affidavit through application of
14 the chief counsel to the Circuit Court of Pulaski County or any circuit court
15 of the state where the subpoena was served. Failure to obey the subpoena may
16 be deemed a contempt, with punishment accordingly.

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18 SECTION 5. Arkansas Code Title 25, Chapter 10, Subchapter 1 is amended
19 to add a new section to read as follows:

20 25-10-141. Subpoenas in administrative adjudications.

21 (a)(1)(A) In every case of adjudication before the Arkansas Department
22 of Human Services, an administrative law judge shall have the power to issue
23 subpoenas for the attendance of witnesses, the production of documents, or
24 both, upon request of any party to the adjudication.

25 (B) Requests for a subpoena shall be granted by the
26 administrative law judge if the testimony or documents desired are considered
27 necessary and material without being unduly repetitious of other available
28 evidence.

29 (2) Each subpoena shall:

30 (A) State that the subpoena is issued in a proceeding
31 pending before the Department of Human Services;

32 (B) Contain the title of the administrative adjudication;
33 and

34 (C) Command each person to whom it is directed to appear
35 and give testimony at the time and place therein specified.

36 (3) Subpoenas may require the production of documents including:

- 1 (A) Writings;
- 2 (B) Drawings;
- 3 (C) Graphs;
- 4 (D) Charts;
- 5 (E) Photographs;
- 6 (F) Recordings; and
- 7 (G) Other data compilations from which information can be
- 8 obtained.

9 (4) The party who requested a subpoena shall be responsible for
 10 servicing the subpoena in the manner provided by law.

11 (5) Return of service shall be recorded and the record shall be
 12 retained in the adjudication case file.

13 (6)(A) The circuit court of Pulaski County or the circuit court
 14 of the county of residence of any person duly served with a subpoena issued
 15 under this section may enforce the subpoena.

16 (B) Enforcement shall be in the manner provided by law for
 17 the enforcement of subpoenas issued by a circuit court.

18 (b) Upon motion and a showing of good cause, the presiding official
 19 may issue orders quashing or limiting subpoenas based on a determination
 20 that:

21 (1) The person subpoenaed does not have relevant, admissible
 22 evidence;

23 (2) The information or records sought are irrelevant to the
 24 adjudication;

25 (3) The information or records sought are confidential and not
 26 subject to disclosure or to production under federal laws or regulations or
 27 state law;

28 (4) Compliance with the subpoena would result in undue burden or
 29 expense; or

30 (5) The evidence possessed by the person subpoenaed or the
 31 information or record sought is unduly repetitious of other available
 32 evidence.

33 (c) If any child served with a subpoena to be a witness in an
 34 administrative hearing is a party to an open dependency-neglect or family in
 35 need of services case, the child's attorney ad litem shall be provided a copy
 36 of the subpoena.