

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No _____
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes _____ No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes _____ No _____
If an agency is proposing a more costly rule, please state the following:
 - (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____

Other (Identify) _____

Total _____

Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Statement of Necessity and Rule Summary

Name Removal from Arkansas Adult Maltreatment Registry

Statement of Necessity:

DHS currently has a rule in place to process name removal from the Child Maltreatment Registry. DHS does not have a corresponding rule in place to process name removal from the Adult Maltreatment Registry. This rule equalizes the process between the two registries.

Rule Summary:

Arkansas Adult Protective Services is establishing a process for adult maltreatment offenders to request consideration to have their name removed from the Arkansas Adult Maltreatment Registry under certain circumstances.

NOTICE OF RULE MAKING

The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§20-76-201 and 25-10-129.

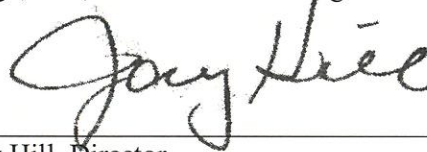
Effective January 1, 2023:

The Director of the Division of Aging, Adult, and Behavioral Health Services (DAABHS) is establishing a process for adult maltreatment offenders to request consideration to have their name removed from the Arkansas Adult Maltreatment Registry in certain circumstances.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at <https://humanservices.arkansas.gov/do-business-with-dhs/proposed-rules/>. Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than **November 11, 2022**. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-534-4138.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin.



Jay Hill, Director
Division of Aging and Adult Behavior Services

Policy and Procedures for Name Removal from the Arkansas Adult Maltreatment Registry

The Arkansas Adult Maltreatment Registry maintained by the Adult Protective Services (APS) division within the Department of Human Services (DHS) will retain all “Founded” reports of maltreatment indefinitely to assist APS in the safety and protection of endangered and impaired Arkansas adults.

Records of all cases in which allegations are determined to be “Unfounded” will not be included in the Adult Maltreatment Registry; however, the information from “Unfounded” reports included in the APS data system will be retained indefinitely to assist APS in assessing future risk and safety of endangered and impaired adults.

APS staff will ensure that all assessments with a “Founded” disposition will be securely stored and will verify and respond to all valid requests for information from a Prosecuting Attorney who is prosecuting a case related to any APS report or case.

No offender who is placed on the Adult Maltreatment Registry will be “automatically” removed from the registry.

Any adult maltreatment offender who qualifies for consideration for removal may apply for consideration of removal through DAABHS. Requests that qualify per time and offense requirements will be reviewed by the Adult Maltreatment Registry Review Team in the order in which they are received.

Consideration for Removal by Review Team

The Adult Maltreatment Registry Review Team shall operate as follows:

A. The Director of the Division of Aging, Adult, and Behavioral Health Services (DAABHS) will appoint the members of the Adult Maltreatment Registry Review Team.

1) The Review Team will be made up of APS central office and field staff.

2) There will be (5) five members with (5) five alternates in case of scheduling conflicts.

3) A representative of OCC may provide legal advice and assistance to the team but will not be a member of the Adult Maltreatment Registry Review Team.

B. The Review Team will select an alternating chairperson for each quarter.

C. The Review Team will determine a regular meeting schedule for the review any requests that meet all criteria but shall meet no less than on an annual, quarterly basis.

D. Review requests must be received sixty (60) days in advance of the review meeting, and all Review Team members will be provided with the case information fifteen (15) days prior to the review team meeting. All decisions will be determined by a majority vote of the team members.

E. All team decisions will be sent in writing by the DAABHS Director or designee.

1) Denials will be sent to the applicants by certified mail within fifteen (15) days from the review team’s decision.

2) Approvals will be sent to the applicants by regular mail within fifteen (15) days of the review team’s decision.

Name Request Removal

An offender may request his or her name be removed from the Adult Maltreatment Registry when:

- A. The individual has not had a subsequent true report for one (1) year; and,
- B. More than (1) year has passed since the offender's name was placed on the Adult Maltreatment Registry.

However, the offender may not request removal from the Adult Maltreatment Registry if any of the following apply:

- A. The offender was placed into the Adult Maltreatment Registry for any type of maltreatment that resulted in a fatality as a direct result of the offender's act or omission;
- B. The offender is still involved in an open criminal court case based on the same underlying facts for which he or she was placed onto the Adult Maltreatment Registry;
- C. The offender was placed onto the Adult Maltreatment Registry for any of the maltreatment types or type involving any of the injury characteristics or details listed below:

- Abuse with deadly weapon;
- Bone fractures;
- Brain Damage/Skull Fracture;
- Burns/scalding;
- Immersion;
- Interfering with a person's breathing;
- Internal injuries;
- Malnutrition;
- Oral sex;
- Poison/noxious substances;
- Sexual exploitation;
- Sexual penetration;
- Subdural hematoma; or
- Suffocation; or

D. The offender is convicted of a criminal offense for an act or omission listed above in C that constitutes adult maltreatment and for which the offender is named in the Adult Maltreatment Registry regardless of any subsequent expungement of the offense from the offender's criminal record, so long as the offender's conviction has not been reversed or vacated.

Application Format for an Offender

An application for name removal from the Adult Maltreatment Registry shall conform to the following:

- A. The offender will submit his or her request/ petition to:

DAABHS/Adult Maltreatment Registry Name Removal
P.O. Box 1437 – Slot W241
Little Rock, AR 72203-1437

and shall also submit:

- 1) A personal letter describing:

- a) The offender's reason for the removal request;
- b) The events and circumstances surrounding the adult maltreatment finding;
- c) The offender's rehabilitation; and,
- d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness;

- 2) Arkansas Adult Maltreatment Registry results free from a true finding of the same maltreatment type for the preceding year;

- 3) Adult Maltreatment Registry results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;

- 4) Arkansas Crime Information Center (ACIC) background check and an adult maltreatment-related check that is free from disqualifying offenses for the preceding one (1) year;

- 5) State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from adult maltreatment-related offenses for the preceding one (1) year;

- 6) Description and documentation (e.g., court records, letter from the offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable;

- 7) Evidence of the offender's rehabilitation, including, but not limited to:

- a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense if applicable.

- b) For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:

- i) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;

- ii) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;
- iii) Indicates whether a sex offender specific assessment was conducted during the therapy period (e.g., the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males Revised, Hare Psychotherapy Scale) (note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered);
- iv) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
- v) One to three letters of reference from professionals, (not to include APS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
- vi) i. No more than one letter of reference can be submitted from a family member.

The Adult Maltreatment Registry Review Team may select additional, non-adult maltreatment-related offenses which prevent name removal from the Adult Maltreatment Registry.

Determination of Name Removal Request by an Offender

The Adult Maltreatment Registry Review Team will consider requests for removal of names from the Registry. In determining whether to remove an offender from the Adult Maltreatment Registry the Review Team shall consider any relevant evidence, which may include without limitation the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for adults;
- E. Information submitted by the petitioner;
- F. And any other information that is relevant to the specific offense.

If the Review Team denies the request-for-removal of the name from the Adult Maltreatment Registry, the Review Team shall send a denial letter to the offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment;

- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for adults;
- E. Any pending criminal charges surrounding the maltreatment;
- F. And any other information that is relevant to the specific offense.

The offender shall wait one year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Adult Maltreatment Registry. However, if the Review Team needs additional information from the offender in order to make the determination as to whether to remove his or her name from the Adult Maltreatment Registry, the Review Team may request that the offender provide the additional information without requiring the offender to wait an additional year to file a new petition. The Review Team shall inform the offender in writing of the specific additional information requested. The offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the offender shall wait one year from the date of the request to file a new petition requesting his or her name be removed from the Adult Maltreatment Registry.

If the Review Team denies the request-for-removal of the name from the Adult Maltreatment Registry, the offender may request Judicial Review pursuant to the Arkansas Administrative Procedures Act.