

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: H2/28/01

# A Bill

Act 995 of 2001  
HOUSE BILL 1703

5 By: Representative J. Elliott  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 21-15-101 THROUGH 21-15-  
10 109 TO REQUIRE BACKGROUND CHECKS ON STATE EMPLOYEES  
11 HAVING DIRECT CONTACT WITH MENTALLY ILL AND  
12 DEVELOPMENTALLY DISABLED PERSONS; AND FOR OTHER  
13 PURPOSES.  
14

## Subtitle

15 AN ACT TO REQUIRE BACKGROUND CHECKS ON  
16 STATE EMPLOYEES HAVING DIRECT CONTACT  
17 WITH MENTALLY ILL AND DEVELOPMENTALLY  
18 DISABLED PERSONS.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code 21-15-101 is amended to read as follows:  
25 21-15-101. Definitions.

26 As used in this subchapter:

27 (1) "Applicant" means a person applying for employment with a state  
28 agency;

29 (2) "Central registry check" means a review of the databases of the  
30 Child Maltreatment Central Registry, the Adult Abuse Central Registry and the  
31 Certified Nursing Assistant/Employment Clearance Registry maintained by the  
32 Office of Long Term Care pursuant to 42 C.F.R. § 483.156 and § 20-10-203;

33 ~~(2)(3)~~ "Child" means a minor under the age of eighteen (18);

34 ~~(3)(4)~~ "Designated position" means a position in which a person is  
35 employed by a state agency to provide care, supervision, treatment, or any  
36 other services to the elderly, ~~to individuals with mental or physical~~

1 ~~disabilities~~ mentally ill or developmentally disabled persons, to individuals  
 2 with mental illnesses, or to children who reside in any state-operated  
 3 facility, or a position in which the applicant or employee will have direct  
 4 contact with a child;

5 ~~(4)(5)~~ "Direct contact" means the ability to interview, question,  
 6 examine, interact with, talk with, or communicate with a child without being  
 7 in the physical presence of a person other than the child;

8 ~~(5)(6)~~ "Elderly" means persons age sixty-five (65) or older; and

9 ~~(6)(7)~~ "State agency" means any agency, authority, board, bureau,  
 10 commission, council, department, office, or officer of the state receiving an  
 11 appropriation by the General Assembly. The term shall not include  
 12 municipalities, townships, counties, school districts, and state-supported  
 13 institutions of higher learning.

14 (8)(A) "Mentally ill persons" are those who suffer from a substantial  
 15 impairment of emotional processes, or of the ability to exercise conscious  
 16 control of their actions, or the ability to perceive reality or to reason,  
 17 when the impairment is manifested in instances of extremely abnormal behavior  
 18 or extremely faulty perceptions.

19 (B) "Mentally ill persons" does not include persons whose  
 20 impairment is solely caused by epilepsy, continuous or noncontinuous periods  
 21 of intoxication caused by substances such as alcohol or drugs, or dependence  
 22 upon or addiction to any substance such as alcohol or drugs.

23 (9) "Developmentally disabled person" means persons with a disability  
 24 which:

25 (A) Is attributable to mental retardation, cerebral palsy,  
 26 epilepsy, or autism;

27 (B) Is attributable to any other condition of a person found to  
 28 be closely related to mental retardation, because it results in an impairment  
 29 of general intellectual functioning or adaptive behavior similar to those of  
 30 mentally retarded persons or requires treatment and services similar to those  
 31 required for such persons; or

32 (C) Is attributable to dyslexia resulting from a disability  
 33 associated with mental retardation, cerebral palsy, epilepsy, or autism.

34  
 35 SECTION 2. Arkansas Code 21-15-102 is amended to read as follows:

36 21-15-102. Positions involving direct contact with children, mentally

1 ill and developmentally disabled persons.

2 (a)(1)(A) When a person applies for employment with a state agency in a  
3 designated position and if the state agency intends to make an offer of  
4 employment to the applicant, the applicant shall complete a criminal history  
5 check form and a central registry check form obtained from the state agency  
6 and shall submit the form to the state agency as part of the application  
7 process.

8 (B) If the state agency intends to make an offer of  
9 employment to the applicant, the state agency shall, within five (5) days of  
10 ~~such~~ the decision, forward:

11 (i) ~~the~~ The criminal history check form to the  
12 Identification Bureau of the Department of Arkansas State Police and request  
13 the bureau to review the bureau's database of criminal history checks on state  
14 agency employees in designated positions. Within three (3) days of the receipt  
15 of a request to review the database, the bureau shall notify the state agency  
16 if the database contains any criminal history records on the applicant; and

17 (ii) The central registry check form to the Child  
18 Mal treatment Central Registry, the Adult Abuse Central Registry and the  
19 Certified Nursing Assistant/Employment Clearance Registry for a central  
20 registry check. The state agency shall pay any fee associated with the central  
21 registry check on behalf of the applicant. Within three (3) days of the  
22 receipt of a request for a central registry check, the central registry shall  
23 notify the state agency if the database contains any information naming the  
24 applicant as an offender or perpetrator of child or adult abuse.

25 (2) If no criminal history or central registry records regarding  
26 the applicant are found in the database, then the state agency may make an  
27 offer of temporary employment to the applicant while the bureau completes a  
28 criminal history check and the state agency determines whether the applicant  
29 is disqualified from employment under subsection (f) of this section.

30 (3) If a criminal history record regarding the applicant is found  
31 in the bureau's database, then the applicant is temporarily disqualified from  
32 employment until the state agency determines whether the applicant is  
33 disqualified from employment under subsection (f) of this section. If the  
34 state agency determines that the applicant is not disqualified, then the state  
35 agency may continue to temporarily employ the applicant while the bureau  
36 completes a criminal history check.

1           (4) If an applicant has been named as an offender or perpetrator  
 2 in a true, substantiated, or founded report from the Child Maltreatment  
 3 Central Registry, the Adult Abuse Central Registry or the Certified Nursing  
 4 Assistant/Employment Clearance Registry, the applicant shall be immediately  
 5 disqualified.

6           (b)(1) Except as provided in subdivision (b)(2) of this section, the  
 7 bureau shall conduct a state criminal history check and a national criminal  
 8 history check on an applicant upon receiving a criminal history check request  
 9 from a state agency.

10           (2) If the state agency can verify that the applicant has been  
 11 employed by a state agency in a ~~position that includes, as part of the job~~  
 12 ~~description, direct contact with a child~~ designated position within sixty (60)  
 13 days before the application or has lived continuously in the State of Arkansas  
 14 for the past five (5) years, the bureau shall conduct only a state criminal  
 15 history check on the applicant.

16           (c) Upon completion of a criminal history check on an applicant, the  
 17 bureau shall issue a report to the state agency. The state agency shall  
 18 determine whether the applicant is disqualified from employment under  
 19 subsection (f) of this section, and if the state agency determines that an  
 20 applicant is disqualified from employment, then the state agency shall deny  
 21 employment to the applicant.

22           (d) When a national criminal history check is required under this  
 23 section, the criminal history check shall conform to the applicable federal  
 24 standards and shall include the taking of fingerprints.

25           (e) Before making a temporary or permanent offer of employment, a state  
 26 agency shall inform applicants that continued employment is contingent upon  
 27 the results of a criminal history and a central registry check and that the  
 28 applicant has the right to obtain a copy of the report of the person's  
 29 criminal history from the bureau and the right to obtain a copy of the report  
 30 of the person's central registry report from the registries.

31           (f) No person shall be eligible for employment with a state agency in a  
 32 ~~position that includes, as part of the job description, direct contact with a~~  
 33 ~~child~~ designated position if that person has pleaded guilty or nolo contendere  
 34 to, or been found guilty of, any of the following offenses by any court in the  
 35 State of Arkansas or of any similar offense by a court in another state or of  
 36 any similar offense by a federal court:

- 1 (1) Capital murder, as prohibited in § 5-10-101;
- 2 (2) Murder in the first degree and second degree, as prohibited  
3 in §§ 5-10-102 and 5-10-103;
- 4 (3) Manslaughter, as prohibited in § 5-10-104;
- 5 (4) Negligent homicide, as prohibited in § 5-10-105;
- 6 (5) Kidnapping, as prohibited in § 5-11-102;
- 7 (6) False imprisonment in the first degree, as prohibited in § 5-  
8 11-103;
- 9 (7) Permanent detention or restraint, as prohibited in § 5-11-  
10 106;
- 11 (8) Robbery, as prohibited in § 5-12-102;
- 12 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 13 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 14 (11) Aggravated assault, as prohibited in § 5-13-204;
- 15 (12) Introduction of controlled substance into body of another  
16 person, as prohibited in § 5-13-210;
- 17 (13) Terroristic threatening in the first degree, as prohibited  
18 in § 5-13-301;
- 19 (14) Rape and carnal abuse in the first degree, second degree,  
20 and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- 21 (15) Sexual abuse in the first degree and second degrees, as  
22 prohibited in §§ 5-14-108 and 5-14-109;
- 23 (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- 24 (17) Violation of a minor in the first degree and second degree,  
25 as prohibited in §§ 5-14-120 and 5-14-121;
- 26 (18) Incest, as prohibited in § 5-26-202;
- 27 (19) Offenses against the family, as prohibited in §§ 5-26-303 -  
28 5-26-306;
- 29 (20) Endangering the welfare of an incompetent person in the  
30 first degree, as prohibited in § 5-27-201;
- 31 (21) Endangering the welfare of a minor in the first degree, as  
32 prohibited in § 5-27-203;
- 33 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
34 and (a)(3) of § 5-27-221;
- 35 (23) Engaging children in sexually explicit conduct for use in  
36 visual or print media, transportation of minors for prohibited sexual conduct,

1 or pandering or possessing visual or print medium depicting sexually explicit  
2 conduct involving a child, or the use of a child or consent to the use of a  
3 child in a sexual performance by producing, directing, or promoting a sexual  
4 performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-  
5 27-402, and 5-27-403;

6 (24) Felony adult abuse, as prohibited by § 5-28-103;

7 (25) Theft of property, as prohibited in § 5-36-103;

8 (26) Theft by receiving, as prohibited in § 5-36-106;

9 (27) Arson, as prohibited in § 5-38-301;

10 (28) Burglary, as prohibited in § 5-39-201;

11 (29) Felony violation of the Uniform Controlled Substances Act,  
12 as prohibited in § 5-64-401;

13 (30) Promotion of prostitution in the first degree, as prohibited  
14 in § 5-70-104;

15 (31) Stalking, as prohibited in § 5-71-229; and

16 (32) Criminal attempt, criminal complicity, criminal  
17 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-  
18 3-301, and 5-3-401, to commit any of the offenses listed in this subsection.  
19

20 SECTION 3. Arkansas Code 21-15-103 is amended to read as follows:

21 21-15-103. Deadline - Scope of check - Report - Notice - Discharge.

22 (a)(1) State agencies shall ensure that all employees in designated  
23 positions will have applied for criminal history checks by October 1, 2000,  
24 and shall adopt a rule that prescribes how criminal background checks on  
25 incumbent employees will be phased in over the period of time prior to July 1,  
26 2000. The rule shall require incumbent employees to apply for criminal history  
27 checks in conjunction with the employee's anniversary of employment or any  
28 time before that date.

29 (2) State agencies shall ensure that all employees in designated  
30 positions will have applied for central registry checks by October 1, 2002,  
31 and shall adopt a rule that prescribes how central registry checks on  
32 incumbent employees will be phased in over the period of time prior to July 1,  
33 2002. The rule shall require incumbent employees to apply for central registry  
34 checks in conjunction with the employee's anniversary of employment or any  
35 time before that date.

36 ~~(2)~~ (3) In accordance with subdivision (a)(1) and (2) of this

1 section, each employee of a state agency in a designated position shall  
2 complete a criminal history check form and a central registry check form  
3 obtained from the state agency and shall submit the form to the state agency.  
4 The state agency shall forward:

5 (A) the The criminal history check form to the  
6 Identification Bureau of the Department of Arkansas State Police. The state  
7 agency shall pay any fee associated with the criminal history check on behalf  
8 of the employee; and

9 (B) The central registry check to the Child Maltreatment  
10 Central Registry, the Adult Abuse Central Registry and the Certified Nurses  
11 Assistants Central Registry to review the databases. The state agency shall  
12 pay any fee associated with the central registry checks.

13 (b)(1) Except as provided in subdivision (b)(2) of this section, the  
14 bureau shall conduct a state criminal history check and a national criminal  
15 history check on an applicant upon receiving a criminal history check request  
16 from a state agency.

17 (2) If the state agency can verify that the applicant has been  
18 employed by a state agency in a designated position within sixty (60) days  
19 before the application or has lived continuously in the State of Arkansas for  
20 the past five (5) years, the bureau shall conduct only a state criminal  
21 history check on the applicant.

22 (c) Upon completion of a criminal history check on an employee, the  
23 bureau shall issue a report to the state agency. The state agency shall  
24 determine whether the employee is disqualified from employment under  
25 subsection (f) of this section, and if the state agency determines that an  
26 employee is disqualified from employment, then the state agency shall  
27 discharge the employee.

28 (d) When a national criminal history check is required under this  
29 section, the criminal history check shall conform to the applicable federal  
30 standards and shall include the taking of fingerprints.

31 (e) If an applicant has been named as an offender or perpetrator in a  
32 true, substantiated, or founded report from the Child Maltreatment Central  
33 Registry, the Adult Abuse Central Registry or the Certified Nursing  
34 Assistant/Employment Clearance Registry, the state agency shall discharge the  
35 employee.

36 ~~(e)~~(f) A state agency shall inform all employees in positions that

1 include, as part of the job description, direct contact with a child, that  
 2 continued employment is contingent upon the results of a criminal history  
 3 check and that the employee has the right to obtain a copy of the report from  
 4 the bureau and the right to obtain a copy of the central registry report from  
 5 the registries.

6 ~~(f)~~(g) A state agency shall discharge from employment in a designated  
 7 position any person who has pleaded guilty or nolo contendere to or been found  
 8 guilty of any of the following offenses by any court in the State of Arkansas  
 9 or of any similar offense by a federal court in another state or of any  
 10 similar offense by a federal court, but only after an opportunity for a  
 11 hearing conducted in accordance with the Arkansas Administrative Procedure  
 12 Act, § 25-15-201 et seq.:

- 13 (1) Capital murder, as prohibited in § 5-10-101;
- 14 (2) Murder in the first degree and second degree, as prohibited  
 15 in §§ 5-10-102 and 5-10-103;
- 16 (3) Manslaughter, as prohibited in § 5-10-104;
- 17 (4) Negligent homicide, as prohibited in § 5-10-105;
- 18 (5) Kidnapping, as prohibited in § 5-11-102;
- 19 (6) False imprisonment in the first degree, as prohibited in § 5-  
 20 11-103;
- 21 (7) Permanent detention or restraint, as prohibited in § 5-11-  
 22 106;
- 23 (8) Robbery, as prohibited in § 5-12-102;
- 24 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 25 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 26 (11) Aggravated assault, as prohibited in § 5-13-204;
- 27 (12) Introduction of controlled substance into body of another  
 28 person, as prohibited in § 5-13-210;
- 29 (13) Terroristic threatening in the first degree, as prohibited  
 30 in § 5-13-301;
- 31 (14) Rape and carnal abuse in the first degree, second degree,  
 32 and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- 33 (15) Sexual abuse in the first degree and second degree, as  
 34 prohibited in §§ 5-14-108 and 5-14-109;
- 35 (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- 36 (17) Violation of a minor in the first degree and second degree,



- 1 as prohibited in §§ 5-14-120 and 5-14-121;
- 2 (18) Incest, as prohibited in § 5-26-202;
- 3 (19) Offenses against the family, as prohibited in §§ 5-26-303 -  
4 5-26-306;
- 5 (20) Endangering the welfare of an incompetent person in the  
6 first degree, as prohibited in § 5-27-201;
- 7 (21) Endangering the welfare of a minor in the first degree, as  
8 prohibited in § 5-27-203;
- 9 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
10 and (a)(3) of § 5-27-221;
- 11 (23) Engaging children in sexually explicit conduct for use in  
12 visual or print media, transportation of minors for prohibited sexual conduct,  
13 pandering or possessing visual or print medium depicting sexually explicit  
14 conduct involving a child, or the use of a child or consent to the use of a  
15 child in a sexual performance by producing, directing, or promoting a sexual  
16 performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-  
17 27-402, and 5-27-403;
- 18 (24) Felony adult abuse, as prohibited in § 5-28-103;
- 19 (25) Theft of property, as prohibited in § 5-36-103;
- 20 (26) Theft by receiving, as prohibited in § 5-36-106;
- 21 (27) Arson, as prohibited in § 5-38-301;
- 22 (28) Burglary, as prohibited in § 5-39-201;
- 23 (29) Felony violation of the Uniform Controlled Substances Act,  
24 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- 25 (30) Promotion of prostitution in the first degree, as prohibited  
26 in § 5-70-104;
- 27 (31) Stalking, as prohibited in § 5-71-229; and
- 28 (32) Criminal attempt, criminal complicity, criminal  
29 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-  
30 3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

31

32 SECTION 4. Arkansas Code 21-15-104(a) and (b), concerning waivers of the  
33 requirement to exclude applicants or discharge employees based on background  
34 checks, is amended to read as follows:

35 (a) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-103(e),  
36 ~~and 21-15-103(f)(g)~~, and 21-15-110(b) may be waived by the director of a state

1 agency upon the request of:

2 (1) A supervisor or other managerial employee in the state  
3 agency;

4 (2) An affected applicant for employment; or

5 (3) The person subject to discharge.

6 (b) Circumstances for which a waiver may be granted shall include, but  
7 not be limited to, the following:

8 (1) The age at which the crime or act was committed;

9 (2) The circumstances surrounding the crime or act;

10 (3) The length of time since the crime or act;

11 (4) Subsequent work history;

12 (5) Employment references;

13 (6) Character references; and

14 (7) Other evidence demonstrating that the applicant or employee  
15 does not pose a threat to the health or safety of children or other clients of  
16 the state agency.

17  
18 SECTION 5. Arkansas Code Annotated 21-15-105(a), concerning  
19 confidentiality of background checks, is amended to read as follows:

20 (a) Any information received by a state agency from the Identification  
21 Bureau of the Department of Arkansas State Police or from a central registry  
22 check pursuant to this subchapter shall not be available for examination  
23 except by the affected applicant for employment or his authorized  
24 representative, and no record, file, or document shall be removed from the  
25 custody of the department.

26  
27 SECTION 6. Arkansas Code 21-15-106(b), concerning rules and regulations  
28 for background checks, is amended as follows:

29 (b) Each state agency shall maintain on file, subject to inspection by  
30 the Arkansas Crime Information Center, ~~or~~ the Identification Bureau of the  
31 Department of Arkansas State Police, or the Child Maltreatment Central  
32 Registry, the Adult Abuse Central Registry, or the Certified Nursing  
33 Assistant/Employment Clearance Registry evidence that criminal history central  
34 registry checks required by this subchapter have been initiated on all  
35 applicants and employees.

36

1 SECTION 7. Arkansas Code 21-15-107 is amended as follows:

2 21-15-107. Duty of bureau and the Child Maltreatment Central Registry,  
3 the Adult Abuse Central Registry and the Certified Nursing  
4 Assistant/Employment Clearance Registry.

5 (a)(1) After receipt of a request for a criminal history check, the  
6 Identification Bureau of the Department of Arkansas State Police shall make  
7 reasonable efforts to respond to requests for state criminal history checks  
8 within twenty (20) calendar days and to respond to requests for national  
9 criminal history checks within ten (10) calendar days after the receipt of a  
10 national criminal history check from the Federal Bureau of Investigation.

11 (2) After receipt of a request for a central registry check, the  
12 registry shall make reasonable efforts to respond to requests within twenty  
13 (20) calendar days.

14 (b)(1) Upon completion of a criminal history check, the Identification  
15 Bureau of the Department of Arkansas State Police shall forward all  
16 information obtained concerning the applicant or employee to the Arkansas  
17 Crime Information Center.

18 (2) Upon completion of a central registry check, the registry  
19 shall forward all information obtained concerning the applicant or employee to  
20 the requesting state agency.

21 (c) The Identification Bureau of the Department of Arkansas State  
22 Police shall maintain a database of the results of criminal history checks on  
23 each applicant for employment with and each employee of a state agency in a  
24 position that includes, as part of the job description, direct contact with a  
25 child or children.

26 (d)(1) The Identification Bureau of the Department of Arkansas State  
27 Police shall develop a form to be used for criminal history checks conducted  
28 under this subchapter. The form shall require the notarized signature of the  
29 person who is the subject of the check.

30 (2) The Child Maltreatment Central Registry, the Adult Abuse  
31 Central Registry and the Certified Nursing Assistant/Employment Clearance  
32 Registry shall work together to develop a form to be used for central registry  
33 checks conducted under this subchapter. The form shall require the notarized  
34 signature of the person who is the subject of the check.

35  
36 SECTION 8. Arkansas Code Title 21, Chapter 15, Subchapter 1, is amended

1 to add the following new section:

2 21-15-110. (a) If a state employee is determined to be an offender or  
3 perpetrator in a true, substantiated, or founded report of child maltreatment  
4 or adult abuse and the state employee is employed in a designated position,  
5 the investigating agency shall immediately notify the employer of that state  
6 employee.

7 (b) The employer shall immediately discharge the employee.

8 */s/ J. Elliott*

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APPROVED: 3/21/2001

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