

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.

**Act 1422 of the Regular Session**

*As Engrossed: S2/23/05 S3/1/05 H3/18/05*

**A Bill**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

SENATE BILL 401

4  
5 By: Senator Faris  
6 By: Representative Reep

7  
8  
9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE CRIMINAL BACKGROUND CHECK  
11 ACT; AND FOR OTHER PURPOSES.

12  
13 **Subtitle**

14 AN ACT TO AMEND THE CRIMINAL BACKGROUND  
15 CHECK ACT.

16  
17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. Arkansas Code §§ 21-15-101 – 21-15-104 are amended to read  
21 as follows:

22 21-15-101. Definitions.

23 As used in this subchapter:

24 (1) "Applicant" means a person applying for employment  
25 with a state agency;

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

32 (3) "Child" means a minor under the age of eighteen (18);

33 (4) "Criminal history check" means a criminal history report  
34 produced by the Identification Bureau of the Department of Arkansas State  
35 Police;



1           ~~(4)~~(5) "Designated position" means a position in which a person  
2 is employed by a state agency to provide care, supervision, treatment, or any  
3 other services to the elderly, to mentally ill or developmentally disabled  
4 persons, to individuals with mental illnesses, or to children who reside in  
5 any state-operated facility or a position in which the applicant or employee  
6 will have direct contact with a child;

7           (6) "Designated financial or information technology position"  
8 means a position designated by a director of a division or office within the  
9 Department of Human Services in which the person placed in the position:

10           (A) Has the authority or capability via computer access or  
11 otherwise to receive payments or to issue, initiate, or approve a contract,  
12 grant, warrant, payment, or procurement in any form;

13           (B) Approves security access to information systems;

14           (C) Authenticates and configures user security access to  
15 information systems;

16           (D) Acts in the capacity of information technology  
17 network, application, or system administrator;

18           (E) Manages or directs information technology network,  
19 application, or system administrators; or

20           (F) Develops, designs, programs, or maintains information  
21 technology networks, applications, or systems;

22           ~~(5)~~(7) "Developmentally disabled person" means a person with a  
23 disability that is attributable to:

24           (A) Mental retardation, cerebral palsy, epilepsy, or  
25 autism;

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

31           (C) Dyslexia resulting from a disability associated with  
32 mental retardation, cerebral palsy, epilepsy, or autism;

33           ~~(6)~~(8) "Direct contact" means the ability to interview,  
34 question, examine, interact with, talk with, or communicate with a child  
35 without being in the physical presence of a person other than the child;

36           ~~(7)~~(9) "Elderly" means persons age sixty-five (65) or older;

1           ~~(8)~~(10)(A) "Mentally ill persons" means those who suffer from a  
2 substantial impairment of emotional processes, or of the ability to exercise  
3 conscious control of their actions, or of the ability to perceive reality or  
4 to reason when the impairment is manifested in instances of extremely  
5 abnormal behavior or extremely faulty perceptions.

6           (B) "Mentally ill persons" does not include persons whose  
7 impairment is solely caused by epilepsy, continuous or noncontinuous periods  
8 of intoxication caused by substances such as alcohol or drugs, or dependence  
9 upon or addiction to any substance such as alcohol or drugs; and

10           ~~(9)~~(11)(A) "State agency" means any agency, authority, board,  
11 bureau, commission, council, department, office, or officer of the state  
12 receiving an appropriation by the General Assembly.

13           (B) "State agency" shall not include municipalities,  
14 townships, counties, school districts, and state-supported institutions of  
15 higher learning.

16  
17           21-15-102. Positions involving direct contact with children and with  
18 mentally ill and developmentally disabled persons.

19           (a)(1)(A) When a person applies for employment with a state agency in  
20 a designated position and if the state agency intends to make an offer of  
21 employment to the applicant, the applicant shall complete a criminal history  
22 check form and a central registry check form obtained from the state agency  
23 and shall submit the form to the state agency as part of the application  
24 process.

25           (B) If the state agency intends to make an offer of  
26 employment to the applicant, the state agency within five (5) days of the  
27 decision shall forward:

28           (i)(a) The criminal history check form to the  
29 *Identification Bureau of the Department of Arkansas State Police and request*  
30 *the bureau to review the bureau's database of criminal history ~~checks on~~*  
31 *~~state agency employees in designated positions.~~*

32           (b) Within three (3) days of the receipt of a  
33 *request to review the database, the bureau shall notify the state agency if*  
34 *the database contains any criminal history records on the applicant; and*

35           (ii)(a) The central registry check form to the Child  
36 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility

1 Resident Maltreatment Central Registry, and the Certified Nursing  
2 Assistant/Employment Clearance Registry for a central registry check.

3 (b) The state agency shall pay any fee  
4 associated with the central registry check on behalf of the applicant.

5 (c) Within three (3) days of the receipt of a  
6 request for a central registry check, the central registry shall notify the  
7 state agency if the database contains any information naming the applicant as  
8 an offender or perpetrator of child or adult abuse.

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

14 (3)(A) If a criminal history record regarding the applicant is  
15 *found in the bureau's database, then the applicant is* temporarily  
16 disqualified from employment until the state agency determines whether the  
17 applicant is disqualified from employment under subsection (f) of this  
18 section.

19 (B) If the state agency determines that the applicant is  
20 not disqualified, then the state agency may continue to temporarily employ  
21 the applicant while the bureau completes a criminal history check.

22 (4) If an applicant has been named as an offender or perpetrator  
23 in a true, substantiated, or founded report from the Child Maltreatment  
24 Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident  
25 Maltreatment Central Registry, or the Certified Nursing Assistant/Employment  
26 Clearance Registry, the applicant shall be immediately disqualified.

27 (b)(1) Except as provided in subdivision (b)(2) of this section, the  
28 *bureau* shall conduct a state criminal history check and a national criminal  
29 history check on an applicant upon receiving a criminal history check request  
30 from a state agency.

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

36 (c)(1) Upon completion of a criminal history check on an applicant,

1 *the bureau* shall issue a report to the state agency.

2 (2)(A) The state agency shall determine whether the applicant is  
3 disqualified from employment under subsection (f) of this section.

4 (B) If the state agency determines that an applicant is  
5 disqualified from employment, then the state agency shall deny employment to  
6 the applicant.

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

10 (e) Before making a temporary or permanent offer of employment in a  
11 designated position, a state agency shall inform applicants that:

12 (1) Continued employment is contingent upon the results of a  
13 criminal history check and a central registry check; and

14 (2) The applicant has the right to obtain a copy of his or her:

15 (A) Criminal history report from the bureau; and

16 (B) Central registry report from the registries.

17 (f) ~~No~~ Except as provided in subdivision (g)(2) of this section, no  
18 person shall be eligible for employment with a state agency in a designated  
19 position if that person has pleaded guilty or nolo contendere to, or been  
20 found guilty of, any of the following offenses by any court in the State of  
21 Arkansas or of any similar offense by a court in another state or of any  
22 similar offense by a federal court unless the conviction was vacated or  
23 reversed:

24 (1) Capital murder, as prohibited in § 5-10-101;

25 (2) Murder in the first degree and second degree, as prohibited  
26 in §§ 5-10-102 and 5-10-103;

27 (3) Manslaughter, as prohibited in § 5-10-104;

28 (4) Negligent homicide, as prohibited in § 5-10-105;

29 (5) Kidnapping, as prohibited in § 5-11-102;

30 (6) False imprisonment in the first degree, as prohibited in §  
31 5-11-103;

32 (7) Permanent detention or restraint, as prohibited in § 5-11-  
33 106;

34 (8) Robbery, as prohibited in § 5-12-102;

35 (9) Aggravated robbery, as prohibited in § 5-12-103;

36 (10) Battery in the first degree, as prohibited in § 5-13-201;

- 1 (11) Aggravated assault, as prohibited in § 5-13-204;
- 2 (12) Introduction of controlled substance into body of another  
3 person, as prohibited in § 5-13-210;
- 4 (13) Terroristic threatening in the first degree, as prohibited  
5 in § 5-13-301;
- 6 (14) Rape, as prohibited in § 5-14-103;
- 7 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 8 (16) Sexual assault in the first degree, second degree, third  
9 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 10 (17) Incest, as prohibited in § 5-26-202;
- 11 (18) Offenses against the family, as prohibited in §§ 5-26-303 -  
12 5-26-306;
- 13 (19) Endangering the welfare of an incompetent person in the  
14 first degree, as prohibited in § 5-27-201;
- 15 (20) Endangering the welfare of a minor in the first degree, as  
16 prohibited in § 5-27-203;
- 17 (21) Permitting abuse of a child, as prohibited in § 5-27-  
18 221(a)(1) and (3);
- 19 (22) Engaging children in sexually explicit conduct for use in  
20 visual or print medium, transportation of minors for prohibited sexual  
21 conduct, pandering or possessing visual or print medium depicting sexually  
22 explicit conduct involving a child, or the use of a child or consent to the  
23 use of a child in a sexual performance by producing, directing, or promoting  
24 a sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-  
25 27-402, and 5-27-403;
- 26 (23) Felony adult abuse, as prohibited in § 5-28-103;
- 27 (24) Theft of property, as prohibited in § 5-36-103;
- 28 (25) Theft by receiving, as prohibited in § 5-36-106;
- 29 (26) Arson, as prohibited in § 5-38-301;
- 30 (27) Burglary, as prohibited in § 5-39-201;
- 31 (28) Felony violation of the Uniform Controlled Substances Act,  
32 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- 33 (29) Promotion of prostitution in the first degree, as  
34 prohibited in § 5-70-104;
- 35 (30) Stalking, as prohibited in § 5-71-229;
- 36 (31) Criminal attempt, criminal complicity, criminal

1 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,  
2 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
3 subsection;

4 (32) Computer child pornography, as prohibited in § 5-27-603;  
5 and

6 (33) Computer exploitation of a child in the first degree, as  
7 prohibited in § 5-27-605.

8 (g)(1) For purposes of this section, an expunged record of a  
9 conviction or plea of guilty or nolo contendere to an offense listed in  
10 subdivision (f) of this section shall not be considered a conviction or a  
11 plea of guilty or nolo contendere to the offense unless the offense is also  
12 listed in subdivision (g)(2) of this section.

13 (2) Because of the serious nature of the following offenses and  
14 the close relationship between the following offenses and the type of work  
15 that is to be performed by the applicant, a conviction of one (1) or more of  
16 the following offenses by an applicant shall result in permanent  
17 disqualification from employment in a designated position:

18 (A) Capital murder, as prohibited in § 5-10-101;

19 (B) Murder in the first degree and murder in the second  
20 degree, as prohibited in §§ 5-10-102 and 5-10-103;

21 (C) Kidnapping, as prohibited in § 5-11-102;

22 (D) Rape, as prohibited in § 5-11-102;

23 (E) Sexual assault in the first degree and second degree,  
24 as prohibited in §§ 5-14-124 and 5-14-125;

25 (F) Endangering the welfare of a minor in the first degree  
26 and endangering the welfare of a minor in the second degree, as prohibited in  
27 §§ 5-27-203 and 5-27-204;

28 (G) Incest, as prohibited in § 5-26-202;

29 (H) Arson, as prohibited in § 5-38-301;

30 (I) Endangering the welfare of an incompetent person in  
31 the first degree, as prohibited in § 5-27-201; and

32 (J) Adult abuse that constitutes a felony, as prohibited  
33 in § 5-28-103.

34  
35 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for  
36 persons in designated positions.

1 (a)(1)(A) State agencies shall ensure that all employees in designated  
2 positions will have applied for criminal history checks by October 1, 2000,  
3 and shall adopt a rule that prescribes how criminal background checks on  
4 incumbent employees will be phased in over the period of time prior to  
5 July 1, 2000.

6 (B) ~~The rule shall require incumbent employees to apply~~  
7 ~~for criminal history checks in conjunction with the employee's anniversary of~~  
8 ~~employment or any time before that date.~~ An incumbent employee in a  
9 designated position shall have a subsequent criminal background check  
10 completed within five (5) years of the initial criminal background check and  
11 every five (5) years thereafter.

12 (2) State agencies shall ensure that all employees in designated  
13 positions will have applied for central registry checks by October 1, 2002,  
14 and shall adopt a rule that prescribes how central registry checks on  
15 incumbent employees will be phased in over the period of time prior to  
16 July 1, 2002. ~~The rule shall require incumbent employees to apply for~~  
17 ~~central registry checks in conjunction with the employee's anniversary of~~  
18 ~~employment or any time before that date.~~ An incumbent employee in a  
19 designated position shall have subsequent central registry checks completed  
20 within five (5) years of the initial central registry check and every five  
21 (5) years thereafter.

22 (3) In accordance with subdivisions (a)(1) and (2) of this  
23 section, each employee of a state agency in a designated position shall  
24 complete a criminal history check form and a central registry check form  
25 obtained from the state agency and shall submit the form to the state agency.  
26 The state agency shall forward:

27 (A)(i) The criminal history check form to the  
28 *Identification Bureau of the Department of Arkansas State Police.*

29 (ii) The state agency shall pay any fee associated  
30 with the criminal history check on behalf of the employee; and

31 (B)(i) The central registry check to the Child  
32 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility  
33 Resident Maltreatment Central Registry, and the Certified Nurses Assistants  
34 Central Registry to review the databases.

35 (ii) The state agency shall pay any fee associated  
36 with the central registry checks.



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

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

10 (c)(1) Upon completion of a criminal history check on an employee, the  
11 *bureau shall issue* a report to the state agency.

12 (2)(A) The state agency shall determine whether the employee is  
13 disqualified from employment under subsection (g) of this section.

14 (B) If the state agency determines that an employee is  
15 disqualified from employment, then the state agency shall discharge the  
16 employee.

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

20 (e) If ~~an~~ a waiver applicant has been named as an offender or  
21 perpetrator in a true, substantiated, or founded report from the Child  
22 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility  
23 Resident Maltreatment Central Registry, or the Certified Nursing  
24 Assistant/Employment Clearance Registry, the state agency shall discharge the  
25 employee.

26 (f) A state agency shall inform all employees in designated positions  
27 that:

28 (1) Continued employment is contingent upon the results of a  
29 criminal history check and a central registry check; and

30 (2) The employee has the right to obtain a copy of his or her:

31 (A) *Criminal history report from the bureau; and*

32 (B) *Central registry report from the registries.*

33 (g) A Except as provided in subdivision (h)(1) of this section, a  
34 *state agency shall discharge from employment in a designated position any*  
35 *person who has pleaded guilty or nolo contendere to, or been found guilty of,*  
36 *any of the following offenses by any court in the State of Arkansas or of any*

1 similar offense by a court in another state or of any similar offense by a  
2 federal court, ~~but only after an opportunity for a hearing conducted in~~  
3 ~~accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et~~  
4 ~~seq. unless the conviction was vacated or reversed:~~

- 5 (1) Capital murder, as prohibited in § 5-10-101;
- 6 (2) Murder in the first degree and second degree, as prohibited  
7 in §§ 5-10-102 and 5-10-103;
- 8 (3) Manslaughter, as prohibited in § 5-10-104;
- 9 (4) Negligent homicide, as prohibited in § 5-10-105;
- 10 (5) Kidnapping, as prohibited in § 5-11-102;
- 11 (6) False imprisonment in the first degree, as prohibited in  
12 § 5-11-103;
- 13 (7) Permanent detention or restraint, as prohibited in § 5-11-  
14 106;
- 15 (8) Robbery, as prohibited in § 5-12-102;
- 16 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 17 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 18 (11) Aggravated assault, as prohibited in § 5-13-204;
- 19 (12) Introduction of controlled substance into body of another  
20 person, as prohibited in § 5-13-210;
- 21 (13) Terroristic threatening in the first degree, as prohibited  
22 in § 5-13-301;
- 23 (14) Rape, as prohibited in § 5-14-103;
- 24 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 25 (16) Sexual assault in the first degree, second degree, third  
26 degree, or fourth degree as prohibited in §§ 5-14-124 - 5-14-127;
- 27 (17) Incest, as prohibited in § 5-26-202;
- 28 (18) Offenses against the family, as prohibited in §§ 5-26-303 -  
29 5-26-306;
- 30 (19) Endangering the welfare of an incompetent person in the  
31 first degree, as prohibited in § 5-27-201;
- 32 (20) Endangering the welfare of a minor in the first degree, as  
33 prohibited in § 5-27-203;
- 34 (21) Permitting abuse of a child, as prohibited in § 5-27-  
35 221(a)(1) and (3);
- 36 (22) Engaging children in sexually explicit conduct for use in

1 visual or print medium, transportation of minors for prohibited sexual  
2 conduct, pandering or possessing visual or print medium depicting sexually  
3 explicit conduct involving a child, or the use of a child or consent to the  
4 use of a child in a sexual performance by producing, directing, or promoting  
5 a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-  
6 27-305, 5-27-402, and 5-27-403;

7 (23) Felony adult abuse, as prohibited in § 5-28-103;

8 (24) Theft of property, as prohibited in § 5-36-103;

9 (25) Theft by receiving, as prohibited in § 5-36-106;

10 (26) Arson, as prohibited in § 5-38-301;

11 (27) Burglary, as prohibited in § 5-39-201;

12 (28) Felony violation of the Uniform Controlled Substances Act,  
13 §§ 5-64-101 – 5-64-608, as prohibited in § 5-64-401;

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

16 (30) Stalking, as prohibited in § 5-71-229;

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

21 (32) Computer child pornography, as prohibited in § 5-27-603;

22 and

23 (33) Computer exploitation of a child in the first degree, as  
24 prohibited in § 5-27-605.

25 (h)(1) For purposes of this section, an expunged record of a  
26 conviction or plea of guilty or nolo contendere to an offense listed in  
27 subdivision (g) of this section shall not be considered a conviction or plea  
28 of guilty or nolo contendere to the offense unless the offense is also listed  
29 in subdivision (h)(2) of this section.

30 (2) Because of the serious nature of the offenses and the close  
31 relationship to the type of work that is to be performed, the following shall  
32 result in permanent disqualification:

33 (A) Capital murder, as prohibited in § 5-10-101;

34 (B) Murder in the first degree and murder in the second  
35 degree, as prohibited in §§ 5-10-102 and 5-10-103;

36 (C) Kidnapping, as prohibited in § 5-11-102;

1 (D) Rape, as prohibited in § 5-11-102;

2 (E) Sexual assault in the first degree and second degree,  
3 as prohibited in §§ 5-14-124 and 5-14-125;

4 (F) Endangering the welfare of a minor in the first degree  
5 and endangering the welfare of a minor in the second degree, as prohibited in  
6 §§ 5-27-203 and 5-27-204;

7 (G) Incest, as prohibited in § 5-26-202;

8 (H) Arson, as prohibited in § 5-38-301;

9 (I) Endangering the welfare of an incompetent person in  
10 the first degree, as prohibited in § 5-27-201; and

11 (J) Adult abuse that constitutes a felony, as prohibited  
12 in § 5-28-103.

13

14 21-15-104. Waiver of exclusion or discharge requirement for persons in  
15 designated positions.

16 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-  
17 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a  
18 state agency upon the request of:

19 ~~(1)~~(A) A supervisor or other managerial employee in the  
20 state agency;

21 ~~(2)~~(B) An affected applicant for employment; or

22 ~~(3)~~(C) The person in a designated position who is subject  
23 to discharge.

24 (2) Application for a waiver must be made within five (5) days  
25 of receipt of the criminal background check.

26 (3) If the crime is a misdemeanor and more than five (5) years  
27 have lapsed since the conviction, the agency is not required to discharge an  
28 incumbent employee if a request for a waiver is timely made and if the waiver  
29 is ultimately granted.

30 (4) If the waiver is not granted and the waiver applicant is an  
31 incumbent employee who was not immediately discharged, the agency shall  
32 immediately discharge the employee.

33 (5) If the waiver is not granted and the waiver applicant is an  
34 applicant for employment, the agency is prohibited from hiring the applicant.

35 (6) If an incumbent employee was immediately discharged but was  
36 subsequently granted a waiver, the employee shall be immediately reinstated

1 but shall not be entitled to retroactive relief, including back pay.

2 (b)(1) A waiver may be granted upon a preponderance of the evidence  
3 that the person is rehabilitated such that the public interest is not  
4 threatened by the person's employment.

5 (2) Evidence of rehabilitation may include: Circumstances for  
6 which a waiver may be granted shall include, but not be limited to, the  
7 following:

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

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

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

11 ~~(4)(D)~~ Subsequent work history;

12 ~~(5)(E)~~ Employment references;

13 ~~(6)(F)~~ Character references; and

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

17 (c) Because of the serious nature of the offenses and the close  
18 relationship to the type of work that is to be performed, the following  
19 offenses may not be waived by the state agency:

20 (1) Capital murder, as prohibited in § 5-10-101;

21 (2) Murder in the first degree and second degree, as prohibited  
22 in §§ 5-10-102 and 5-10-103;

23 (3) Kidnapping, as prohibited in § 5-11-102;

24 (4) Rape, as prohibited in § 5-14-103;

25 (5) Sexual assault in the first degree and second degree, as  
26 prohibited in §§ 5-14-124 and 5-14-125;

27 (6) Sexual indecency with a child, as prohibited in § 5-14-110;

28 (7) Endangering the welfare of an incompetent person in the  
29 first degree, as prohibited in § 5-27-201;

30 (8) Endangering the welfare of a minor in the first degree, as  
31 prohibited in § 5-27-203;

32 (9) Engaging children in sexually explicit conduct for use in  
33 visual or print media, transportation of minors for prohibited sexual  
34 conduct, pandering or possessing visual or print medium depicting sexually  
35 explicit conduct involving a child, or use of a child or consent to the use  
36 of a child in a sexual performance by producing, directing, or promoting a

1 sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-  
2 402, and 5-27-403;

3 (10) Felony adult abuse, as prohibited in § 5-28-103;

4 (11) Arson, as prohibited in § 5-38-301;

5 (12) Computer child pornography, as prohibited in § 5-27-603;

6 and

7 (13) Computer exploitation of a child in the first degree, as  
8 prohibited in § 5-27-605.

9

10 SECTION 2. Arkansas Code §§ 21-15-106 and 21-15-107 are amended to  
11 read as follows:

12 21-15-106. Rules and regulations - Records.

13 (a) All state agencies with a designated position or a designated  
14 financial or information technology position shall adopt the necessary rules  
15 and regulations to fully implement the provisions of this subchapter.

16 (b) Each state agency shall maintain on file, subject to inspection by  
17 the Arkansas Crime Information Center, the Identification Bureau of the  
18 Department of Arkansas State Police, or the Child Maltreatment Central  
19 Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident Maltreatment  
20 Central Registry, or the Certified Nursing Assistant/Employment Clearance  
21 Registry evidence that criminal history and central registry checks required  
22 by this subchapter have been initiated on all applicants and employees.

23

24 21-15-107. Identification Bureau and registries - Duties.

25 (a)(1) After receipt of a request for a criminal history check, the  
26 *Identification Bureau of the Department of Arkansas State Police shall make*  
27 *reasonable efforts to respond to requests for state criminal history checks*  
28 *within twenty (20) calendar days and to respond to requests for national*  
29 *criminal history checks within ten (10) calendar days after the receipt of a*  
30 *national criminal history check from the Federal Bureau of Investigation.*

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

34 (b)(1) *Upon completion of a criminal history check, the Identification*  
35 *Bureau of the Department of Arkansas State Police shall forward all*  
36 *information obtained concerning the applicant or employee to the Arkansas*

1 Crime Information Center.

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

5 (c) *The Identification Bureau of the Department of Arkansas State*  
6 *Police shall maintain a database of the results of criminal history checks on*  
7 *each applicant for employment with and each employee of a state agency in a*  
8 *designated position.*

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

13 (2) The Child Maltreatment Central Registry, the Adult ~~Abuse~~ and  
14 Long-Term Care Facility Resident Maltreatment Central Registry, and the  
15 Certified Nursing Assistant/Employment Clearance Registry shall work together  
16 to develop a form to be used for central registry checks conducted under this  
17 subchapter. The form shall require the notarized signature of the person who  
18 is the subject of the check.

19

20 SECTION 3. Arkansas Code Title 21, Chapter 15, Subchapter 1, is  
21 amended to add the following new sections:

22 21-15-111. Hiring new employees into designated financial or  
23 information technology positions.

24 (a)(1)(A) When a person applies for employment with a state agency in  
25 a designated financial or information technology position and if the state  
26 agency intends to make an offer of employment to the applicant, the applicant  
27 shall complete a criminal history check form and shall submit the form to the  
28 state agency as part of the application process.

29 (B) Within five (5) days of the state agency's decision to  
30 make an offer of employment to the applicant, the state agency shall forward  
31 the criminal history check form to the Identification Bureau of the  
32 Department of Arkansas State Police and request the bureau to review the  
33 database of criminal history.

34 (C) Within three (3) days of the receipt of a request to  
35 review the database, the bureau shall notify the state agency if the database  
36 contains any criminal history records on the applicant.

1           (2) If no criminal history records regarding the applicant are  
2 found in the database, then the state agency may make an offer of temporary  
3 employment to the applicant while the bureau completes a criminal history  
4 check and the state agency determines whether the applicant is disqualified  
5 from employment under subsection (f) of this section.

6           (3)(A) If a criminal history record regarding the applicant is  
7 found in the database, then the applicant is temporarily disqualified from  
8 employment until the state agency determines whether the applicant is  
9 disqualified from employment under subsection (f) of this section.

10           (B) If the state agency determines that the applicant is  
11 not disqualified, then the state agency may continue to temporarily employ  
12 the applicant while the bureau completes a criminal history check.

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 financial or information  
19 technology position within sixty (60) days before the application or has  
20 lived continuously in the State of Arkansas for the past five (5) years, the  
21 bureau shall conduct only a state criminal history check on the applicant.

22           (c)(1) Upon completion of a criminal history check on an applicant,  
23 the bureau shall issue a report to the state agency.

24           (2)(A) The state agency shall determine whether the applicant is  
25 disqualified from employment under subsection (f) of this section.

26           (B) If the state agency determines that an applicant is  
27 disqualified from employment, then the state agency shall deny employment to  
28 the applicant.

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

32           (e) Before making a temporary or permanent offer of employment, a  
33 state agency shall inform applicants that:

34           (1) Continued employment is contingent upon the results of a  
35 criminal history check; and

36           (2) The applicant has the right to obtain a copy of his or her



1 criminal history report from the bureau.

2 (f) An expunged record of a conviction or plea of guilty or nolo  
3 contendere to an offense listed in this subsection (f) shall not be  
4 considered a conviction or plea of guilty or nolo contendere to the offense.

5 No person shall be eligible for employment with a state agency in a  
6 designated financial or information technology position if that person has  
7 pleaded guilty or nolo contendere to, or has been found guilty of, any of the  
8 following offenses by any court in the State of Arkansas or of any similar  
9 offense by a court in another state or of any similar offense by a federal  
10 court unless the conviction was vacated, or reversed:

11 (1) Robbery, as prohibited in § 5-12-102;

12 (2) Aggravated robbery, as prohibited in § 5-12-103;

13 (3) Soliciting money or property from incompetents, as  
14 prohibited in § 5-27-229;

15 (4) Theft of property, as prohibited in § 5-36-103;

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

17 (6) Theft of property lost, mislaid, or delivered by mistake, as  
18 prohibited in § 5-36-105;

19 (7) Theft of leased, rented, or entrusted personal property, as  
20 prohibited in § 5-36-115;

21 (8) Shoplifting, as prohibited in § 5-36-116;

22 (9) Embezzlement by officer or employee of certain institutions,  
23 as prohibited in § 5-36-118;

24 (10) Theft of public benefits, as prohibited in § 5-36-202;

25 (11) Theft of wireless service, as prohibited in § 5-36-303;

26 (12) Facilitating theft of wireless service by manufacture,  
27 distribution, or possession of devices for theft of wireless services, as  
28 prohibited in § 5-36-304;

29 (13) Any offense involving theft detection devices, as  
30 prohibited in §§ 5-36-401 through 5-36-405;

31 (14) Forgery, as prohibited in § 5-37-201;

32 (15) Falsifying business records, as prohibited in § 5-37-202;

33 (16) Defrauding secured creditors, as prohibited in § 5-37-203;

34 (17) Fraud in insolvency, as prohibited in § 5-37-204;

35 (18) Issuing a false financial statement, as prohibited in § 5-  
36 37-205;

1           (19) Receiving deposits in a failing financial institution, as  
2 prohibited in § 5-37-206;

3           (20) Fraudulent use of a credit card or debit card, as  
4 prohibited in § 5-37-207;

5           (21) Criminal impersonation, as prohibited in § 5-37-208;

6           (22) Criminal possession of a forgery device, as prohibited in  
7 § 5-37-209;

8           (23) Obtaining signature by deception, as prohibited in § 5-37-  
9 210;

10          (24) Defrauding judgment creditors, as prohibited in § 5-37-211;

11          (25) Unlawfully using slugs, as prohibited in § 5-37-212;

12          (26) Criminal simulation, as prohibited in § 5-37-213;

13          (27) Use of false transcript, diploma, or grade report from  
14 postsecondary educational institution, as prohibited in § 5-37-225;

15          (28) Financial identify fraud, as prohibited in § 5-37-227;

16          (29) Any offense violating The Arkansas Hot Check Law, as  
17 prohibited in §§ 5-37-301 through 5-37-307;

18          (30) Theft of communication services, as prohibited in § 5-37-  
19 402;

20          (31) Criminal mischief in the first degree, as prohibited in  
21 § 5-38-203;

22          (32) Residential or commercial burglary, as prohibited in § 5-  
23 39-201;

24          (33) Breaking or entering, as prohibited in § 5-39-202;

25          (34) Computer fraud, as prohibited in § 5-41-103;

26          (35) Computer trespass, as prohibited in § 5-41-104;

27          (36) Any offense involving computer crime, as prohibited in  
28 §§ 5-41-201 through 5-41-206;

29          (37) Criminal use of property or laundering criminal proceeds,  
30 as prohibited in § 5-42-204;

31          (38) Any offense involving corruption in public office, as  
32 prohibited in §§ 5-52-101 through 5-52-108;

33          (39) Tampering with a public record, as prohibited in § 5-54-  
34 121;

35          (40) Criminal acts constituting Medicaid fraud, as prohibited in  
36 § 5-55-111;

1           (41) Any offense involving illegal food coupons, as prohibited  
2 in §§ 5-55-201 through 5-55-205;

3           (42) Engaging in a continuing criminal gang, organization, or  
4 enterprise, as prohibited in § 5-74-104; and

5           (43) Criminal attempt, criminal complicity, criminal  
6 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,  
7 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
8 subsection (f).

9  
10           21-15-112. Incumbent employees in designated financial or information  
11 technology positions.

12           (a)(1) State agencies shall ensure that all employees in designated  
13 financial or information technology positions apply for criminal history  
14 checks by December 1, 2005.

15           (2) Incumbent employees in designated financial or information  
16 technology positions shall have a subsequent criminal background check within  
17 five (5) years of the initial criminal background check and every five (5)  
18 years thereafter.

19           (3)(A) In accordance with subdivisions (a)(1) and (a)(2) of this  
20 section, each employee of a state agency in a designated financial or  
21 information technology position shall complete a criminal history check form  
22 and shall submit the form to the state agency.

23           (B) The state agency shall:

24                   (i) Forward the criminal history check form to the  
25 Identification Bureau of the Department of Arkansas State Police; and

26                   (ii) Pay any fee associated with the criminal  
27 history check on behalf of the employee.

28           (b)(1) Except as provided in subdivision (b)(2) of this section, the  
29 bureau shall conduct a state criminal history check and a national criminal  
30 history check on an employee upon receiving a criminal history check request  
31 from a state agency.

32           (2) If the state agency can verify that the employee has been  
33 employed by a state agency in a designated financial or information  
34 technology position within sixty (60) days before applying for the criminal  
35 background check or has lived continuously in the State of Arkansas for the  
36 previous five (5) years, the bureau shall conduct only a state criminal

1 history check on the applicant.

2 (c)(1) Upon completion of a criminal history check on an employee, the  
3 bureau shall issue a report to the state agency.

4 (2)(A) The state agency shall determine whether the employee is  
5 disqualified from employment under subsection (f) of this section.

6 (B) If the state agency determines that an employee is  
7 disqualified from employment, then the state agency shall discharge the  
8 employee.

9 (d) If a national criminal history check is required under this  
10 section, the criminal history check shall conform to the applicable federal  
11 standards and shall include the taking of fingerprints.

12 (e) A state agency shall inform all employees in designated financial  
13 or information technology positions that:

14 (1) Continued employment is contingent upon the results of a  
15 criminal history check; and

16 (2) The employee has the right to obtain a copy of his or her  
17 criminal history report from the bureau.

18 (f) An expunged record of a conviction or plea of guilty or nolo  
19 contendere to an offense listed in this subsection (f) shall not be  
20 considered a conviction or plea of guilty or nolo contendere to the offense.  
21 A state agency shall discharge from employment in a designated financial or  
22 information technology position an employee who has pleaded guilty or nolo  
23 contendere to, or has been found guilty of, any of the following offenses by  
24 any court in the State of Arkansas or of any similar offense by a court in  
25 another state or of any similar offense by a federal court unless the  
26 conviction was vacated or reversed:

27 (1) Robbery, as prohibited in § 5-12-102;

28 (2) Aggravated robbery, as prohibited in § 5-12-103;

29 (3) Soliciting money or property from incompetents, as  
30 prohibited in § 5-27-229;

31 (4) Theft of property, as prohibited in § 5-36-103;

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

33 (6) Theft of property lost, mislaid, or delivered by mistake, as  
34 prohibited in § 5-36-105;

35 (7) Theft of leased, rented, or entrusted personal property, as  
36 prohibited in § 5-36-115;

- 1           (8) Shoplifting, as prohibited in § 5-36-116;  
2           (9) Embezzlement by officer or employee or certain institutions,  
3 as prohibited in § 5-36-118;  
4           (10) Theft of public benefits, as prohibited in § 5-36-202;  
5           (11) Theft of wireless service, as prohibited in § 5-36-303;  
6           (12) Facilitating theft of wireless service by manufacture,  
7 distribution, or possession of devices for theft of wireless services, as  
8 prohibited in § 5-36-304;  
9           (13) Any offense involving theft detection devices, as  
10 prohibited in §§ 5-36-401 through 5-36-405;  
11           (14) Forgery, as prohibited in § 5-37-201;  
12           (15) Falsifying business records, as prohibited in § 5-37-202;  
13           (16) Defrauding secured creditors, as prohibited in § 5-37-203;  
14           (17) Fraud in insolvency, as prohibited in § 5-37-204;  
15           (18) Issuing a false financial statement, as prohibited in § 5-  
16 37-205;  
17           (19) Receiving deposits in a failing financial institution, as  
18 prohibited in § 5-37-206;  
19           (20) Fraudulent use of a credit card or debit card, as  
20 prohibited in § 5-37-207;  
21           (21) Criminal impersonation, as prohibited in § 5-37-208;  
22           (22) Criminal possession of a forgery device, as prohibited in  
23 § 5-37-209;  
24           (23) Obtaining signature by deception, as prohibited in § 5-37-  
25 210;  
26           (24) Defrauding judgment creditors, as prohibited in § 5-37-211;  
27           (25) Unlawfully using slugs, as prohibited in § 5-37-212;  
28           (26) Criminal simulation, as prohibited in § 5-37-213;  
29           (27) Use of false transcript, diploma, or grade report from  
30 postsecondary educational institution, as prohibited in § 5-37-225;  
31           (28) Financial identify fraud, as prohibited in § 5-37-227;  
32           (29) Any offense violating The Arkansas Hot Check Law, as  
33 prohibited in §§ 5-37-301 through 5-37-307;  
34           (30) Theft of communication services, as prohibited in § 5-37-  
35 402;  
36           (31) Criminal mischief in the first degree, as prohibited in

1 § 5-38-203;

2 (32) Residential or commercial burglary, as prohibited in § 5-  
3 39-201;

4 (33) Breaking or entering, as prohibited in § 5-39-202;

5 (34) Computer fraud, as prohibited in § 5-41-103;

6 (35) Computer trespass, as prohibited in § 5-41-104;

7 (36) Any offense involving computer crime, as prohibited in  
8 §§ 5-41-201 through 5-41-206;

9 (37) Criminal use of property or laundering criminal proceeds,  
10 as prohibited in § 5-42-204;

11 (38) Any offense involving corruption in public office, as  
12 prohibited in §§ 5-52-101 through 5-52-108;

13 (39) Tampering with a public record, as prohibited in § 5-54-  
14 121;

15 (40) Criminal acts constituting Medicaid fraud, as prohibited in  
16 § 5-55-111;

17 (41) Any offense involving illegal food coupons, as prohibited  
18 in §§ 5-55-201 through 5-55-205;

19 (42) Engaging in a continuing criminal gang, organization, or  
20 enterprise, as prohibited in § 5-74-104; and

21 (43) Criminal attempt, criminal complicity, criminal  
22 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,  
23 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
24 subsection (f).

25  
26 21-15-113. Waiver of exclusion or discharge requirement for persons in  
27 designated financial or information technology positions.

28 (a)(1) The provisions of §§ 21-15-111 and 21-15-112 prohibiting the  
29 hiring of a person or requiring the discharge of a person in a designated  
30 financial or information technology position may be waived by the director of  
31 a state agency upon the request of:

32 (A) A supervisor or other managerial employee in the state  
33 agency;

34 (B) An affected applicant for employment; or

35 (C) The person in the designated financial or information  
36 technology position who is subject to discharge.

1           (2) Application for a waiver must be made within five (5) days  
2 of the receipt of the criminal background check.

3           (3) If the crime is a misdemeanor and more than five (5) years  
4 have lapsed since the conviction, the agency is not required to discharge an  
5 incumbent employee if a request for a waiver is timely made and if the waiver  
6 is ultimately granted.

7           (4) If the waiver is not granted and the waiver applicant is an  
8 incumbent employee who was not immediately discharged, the agency shall  
9 immediately discharge the employee.

10           (5) If the waiver is not granted and the waiver applicant is an  
11 applicant for employment, the agency is prohibited from hiring the applicant  
12 in a designated financial or information technology position.

13           (6) If an incumbent employee was immediately discharged but was  
14 subsequently granted a waiver, the employee shall be immediately reinstated  
15 but shall not be entitled to retroactive relief, including back pay.

16           (b)(1) A waiver may be granted upon a preponderance of the evidence  
17 that the person is rehabilitated such that the public interest is not  
18 threatened by the person's employment.

19           (2) Evidence of rehabilitation may include:

20                         (A) The age at which the crime or act was committed;

21                         (B) The circumstances surrounding the crime or act;

22                         (C) The length of time since the crime or act;

23                         (D) Subsequent work history;

24                         (E) Employment references;

25                         (F) Character references; and

26                         (G) Other evidence demonstrating the rehabilitation of the  
27 applicant or employee.

28  
29   /s/ Faris

30  
31  
32   APPROVED: 3/30/2005

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