

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 1766 of the Regular Session**

*As Engrossed: H2/24/05 S3/24/05*

**A Bill**

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

HOUSE BILL 1572

4  
5 By: Representative Bright  
6  
7

**For An Act To Be Entitled**

8  
9 AN ACT TO AMEND THE CHILD WELFARE AGENCY  
10 LICENSING ACT.  
11

**Subtitle**

12  
13 AN ACT TO AMEND THE CHILD WELFARE AGENCY  
14 LICENSING ACT; AND FOR OTHER PURPOSES.  
15  
16

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

19 SECTION 1. Arkansas Code § 9-28-402 is amended to read as follows:  
20 9-28-402. Definitions.

21 As used in this subchapter:

22 (1) "Adoptive home" means a household of one (1) or more persons  
23 which has been approved by a licensed child placement agency to accept a  
24 child for adoption;

25 (2) "Adverse action" means any petition by the division before  
26 the Child Welfare Agency Review Board to take any of the following actions  
27 against a licensee or applicant for a license:

28 (A) Revocation of license;

29 (B) Suspension of license;

30 (C) Conversion of license from regular status to  
31 provisional status;

32 (D) Imposition of a civil penalty;

33 (E) Denial of application; or

34 (F) Reduction of licensed capacity;

35 (3) "Alternative compliance" means a request for approval from



1 the board to allow a licensee to deviate from the letter of a regulation  
2 provided that the licensee has demonstrated how an alternate plan of  
3 compliance will meet or exceed the intent of the regulation;

4 (4) "Board" means the Child Welfare Agency Review Board;

5 (5) "Boarding school" means an institution that is operated  
6 solely for educational purposes and that meets each of the following  
7 criteria:

8 (A) The institution is in operation for a period of time  
9 not to exceed the minimum number of weeks of classroom instruction required  
10 of schools accredited by the Department of Education;

11 (B) The children in residence must customarily return to  
12 their family homes or legal guardians during school breaks and must not be in  
13 residence year round, except that this provision does not apply to students  
14 from foreign countries; and

15 (C) The parents of children placed in the institution  
16 retain custody and planning and financial responsibility for the children;

17 (6) "Child welfare agency" means any person, corporation,  
18 partnership, voluntary association or other entity or identifiable group of  
19 entities having a coordinated ownership of controlling interest, whether  
20 established for profit or otherwise, who engages in any of the following  
21 activities:

22 (A) Receives a total number of six (6) or more unrelated  
23 minors for care on a twenty-four-hour basis for the purpose of ensuring the  
24 minors receive care, training, education, custody, or supervision, whether or  
25 not there are six (6) or more children cared for at any single physical  
26 location;

27 (B) Places any unrelated minor for care on a twenty-four-  
28 hour basis with persons other than themselves; or

29 (C) Plans for or assists in the placements described in  
30 subdivision (a)(6)(B) of this section;

31 (7) "Child placement agency" means a child welfare agency, not  
32 including any person licensed to practice medicine or law in the State of  
33 Arkansas, who engages in any of the following activities:

34 (A) Places a child in a foster home, adoptive home, or any  
35 type of facility licensed or exempted by this subchapter;

36 (B) Plans for the placement of a child in a foster home,

1 adoptive home, or any type of facility licensed or exempted by this  
2 subchapter; or

3 (C) Assists the placement of a child in a foster home,  
4 adoptive home, or any type of facility licensed or exempted by this  
5 subchapter;

6 (8)(A) "Class A violation" means violations of essential  
7 standards, including those governing fire, health, safety, nutrition, staff-  
8 to-child ratio, and space.

9 (B) Operation of an unlicensed child welfare agency shall  
10 also be a Class A violation, unless specifically exempted as provided in this  
11 subchapter;

12 (9) "Class B violation" means any other violations of standards  
13 that are not Class A violations;

14 (10) "Division" means the division within the Department of  
15 Human Services that shall be designated by the Director of the Department of  
16 Human Services to administer this subchapter;

17 (11) "Emergency child care" means any residential child care  
18 facility that provides care to children on a time-limited basis, not to  
19 exceed ninety (90) days;

20 (12) "Exempt child welfare agency" means any person,  
21 corporation, partnership, voluntary association or other entity, whether  
22 established for profit or otherwise, who otherwise fits the definition of a  
23 child welfare agency, but who is specifically exempt from the requirement of  
24 obtaining a license under this subchapter. Those agencies specifically exempt  
25 from the license requirement are:

26 (A) A facility or program owned or operated by an agency  
27 of the United States government;

28 (B) Any agency of the State of Arkansas that is  
29 statutorily authorized to administer or supervise child welfare activities.  
30 In order to maintain exempt status, the state child welfare agency shall  
31 state every two (2) years in written form signed by the persons in charge  
32 that their agency is in substantial compliance with published state agency  
33 child welfare standards. Visits to review and advise exempt state agencies  
34 shall be made as deemed necessary by the board to verify and maintain  
35 substantial compliance with the standards;

36 (C) A facility or program owned or operated by or under

1 contract with the Department of Correction;

2 (D) A hospital providing acute care licensed pursuant to §  
3 20-9-201 et seq.;

4 (E) Any facility governed by the Arkansas State Hospital  
5 Board or its successor;

6 (F) Human development centers regulated by the Board of  
7 Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

8 (G) Any facility licensed as a family home pursuant to §  
9 20-48-601 et seq.;

10 (H) Any boarding school as defined in this section;

11 (I) Any temporary camp as defined in this section;

12 (J) Any state-operated facility to house juvenile  
13 delinquents or any serious offender program facility operated by a state  
14 designee to house juvenile delinquents. Those facilities shall be subject to  
15 program requirements modeled on nationally recognized correctional facility  
16 standards which shall be developed, administered, and monitored by the  
17 Division of Youth Services of the Department of Human Services;

18 (K) Any child welfare agency operated solely by a  
19 religious organization that elects to be exempt from licensing and which  
20 complies within the conditions of the exemption for church-operated agencies  
21 as set forth in this subchapter;

22 (L) The Division of Developmental Disabilities Services of  
23 the Department of Human Services; and

24 (M) Any developmental disabilities services waiver  
25 provider licensed under § 20-48-208 or §§ 20-48-601 - 611;

26 (13) "Foster home" means a private residence of one (1) or more  
27 family members that receives from a child placement agency any minor child  
28 who is unattended by a parent or guardian in order to provide care, training,  
29 education, custody, or supervision on a twenty-four-hour basis, not to  
30 include adoptive homes;

31 (14) "Independent living home" means any child welfare agency  
32 that provides specialized services in adult living preparation in an  
33 experiential setting for persons sixteen (16) years of age or older;

34 (15) "Minimum standards" means those rules and regulations as  
35 established by the board that set forth the minimum acceptable level of  
36 practice for the care of children by a child welfare agency;

1           (16) "Provisional foster home" means a foster home opened for no  
2 more than six (6) months by the Division of Children and Family Services of  
3 the Department of Human Services on a relative of a child in the custody of  
4 the division after the division:

5           (A) Conducts a health and safety check, including a  
6 central registry check and a criminal background check or check with local  
7 law enforcement, on the relative's home; and

8           (B) Performs a visual inspection of the home of the  
9 relative to verify that the relative will meet the standards for opening a  
10 regular foster home;

11           ~~(16)~~(17) "Psychiatric residential treatment facility" means a  
12 residential child care facility in a nonhospital setting that provides a  
13 structured, systematic, therapeutic program of treatment under the  
14 supervision of a psychiatrist, for children who are emotionally disturbed and  
15 in need of daily nursing services, psychiatrist's supervision, and  
16 residential care, but who are not in an acute phase of illness requiring the  
17 services of an inpatient psychiatric hospital;

18           (18) "Relative" means a person within the fifth degree of  
19 kinship by virtue of blood or adoption;

20           ~~(17)~~(19) "Religious organization" means a church, synagogue, or  
21 mosque or association of same whose purpose is to support and serve the  
22 propagation of truly held religious beliefs;

23           ~~(18)~~(20) "Residential child care facility" means any child  
24 welfare agency that provides care, training, education, custody, or  
25 supervision on a twenty-four-hour basis for six (6) or more unrelated minors;

26           ~~(19)~~(21) "Substantial compliance" means compliance with all  
27 essential standards necessary to protect the health, safety, and welfare of  
28 the children in the care of the child welfare agency. Essential standards  
29 include, but are not limited to, those relating to issues involving fire,  
30 health, safety, nutrition, discipline, staff-to-child ratio, and space;

31           ~~(20)~~(22) "Temporary camp" means any facility or program  
32 providing twenty-four-hour care or supervision to children which meets the  
33 following criteria:

34           (A) The facility or program is operated for recreational,  
35 educational, or religious purposes only;

36           (B) No child attends the program more than forty (40) days

1 in a calendar year; and

2 (C) The parents of children placed in the program retain  
3 custody and planning and financial responsibility for the children during  
4 placement; and

5 ~~(21)~~(23) "Unrelated minor" means a child who is not related by  
6 blood, marriage, or adoption to the owner or operator of the child welfare  
7 agency and who is not a ward of the owner or operator of the child welfare  
8 agency pursuant to a guardianship order issued by a court of competent  
9 jurisdiction.

10

11 SECTION 2. Arkansas Code § 9-28-407(h)(1) and (2), concerning  
12 requirements and issuance of licenses for child welfare agencies, are amended  
13 to read as follows:

14 (h)(1) Reports, correspondence, memoranda, case histories, or other  
15 materials compiled or received by a licensee or a state agency engaged in  
16 placing a child, including both foster care and protective services records,  
17 shall be confidential and shall not be released or otherwise made available  
18 except to the extent permitted by federal law and only:

19 (A) To the director as required by regulation;

20 (B) For adoptive placements as provided by the Revised  
21 Uniform Adoption Act, § 9-9-201 et seq.;

22 (C) To multidisciplinary teams under § 12-12-502(b);

23 (D)(i) To the child's parent, guardian, or custodian.

24 (ii) However, the licensee or state agency may  
25 redact information from the record such as the name or address of foster  
26 parents or providers when it is in the best interest of the child.

27 (iii) The licensee or state agency may redact  
28 counseling records, psychological or psychiatric evaluations, examinations,  
29 or records, drug screens or drug evaluations, or similar information  
30 concerning a parent if the other parent is requesting a copy of a record;

31 (E) To the child;

32 (F)(i) To health care providers to assist in the care and  
33 treatment of the child at the discretion of the licensee or state agency and  
34 if deemed to be in the best interest of the child.

35 (ii) "Health care providers" includes doctors,  
36 nurses, emergency medical technicians, counselors, therapists, mental health

1 professionals, and dentists;

2 (G) To school personnel and day care centers caring for  
3 the child at the discretion of the licensee or state agency and if deemed to  
4 be in the best interest of the child;

5 (H)(i) To foster parents, the foster care record for  
6 foster children currently placed in their home.

7 (ii) However, information about the parents or  
8 guardians and any siblings not in the foster home shall not be released;

9 (I)(i) To the board.

10 (ii) However, at any board meeting no information  
11 which identifies by name or address any protective services recipient or  
12 foster care child shall be orally disclosed or released in written form to  
13 the general public;

14 (J) To the Division of Youth Services of the Department of  
15 Human Services, including child welfare agency licensing specialists;

16 (K) For any audit or similar activity conducted in  
17 connection with the administration of any such plan or program by any  
18 governmental agency which is authorized by law to conduct the audit or  
19 activity;

20 (L) Upon presentation of an order of appointment, to a  
21 court-appointed special advocate;

22 (M) To the attorney ad litem for the child;

23 (N) For law enforcement or the prosecuting attorney at the  
24 discretion of the licensee or state agency and if deemed to be in the best  
25 interest of the child;

26 (O) To circuit courts, as provided for in the Arkansas  
27 Juvenile Code of 1989, § 9-27-301 et seq.;

28 (P) In a criminal or civil proceeding conducted in  
29 connection with the administration of any such plan or program;

30 (Q) For purposes directly connected with the  
31 administration of any of the state plans as outlined at 42 U.S.C. 671(a)(8),  
32 as in effect January 1, 2001;

33 (R) For the administration of any other federal or  
34 federally assisted program which provides assistance, in cash or in kind, or  
35 services, directly to individuals on the basis of need; ~~or~~

36 (S)(i) To individual federal and state representatives and

1 senators and their staff members with no redisclosure of information.

2 (ii) No disclosure shall be made to any committee or  
3 legislative body of any information which identifies by name or address any  
4 recipient of services; or

5 (T) To a grand jury or court upon a finding that  
6 information in the record is necessary for the determination of an issue  
7 before the court or grand jury.

8 (2) Foster home and adoptive home records are confidential and  
9 shall not be released except:

10 (A) To the foster parents or adoptive parents;

11 (B) For purposes of review or audit, by the appropriate  
12 federal or state agency;

13 (C) Upon allegations of child maltreatment in the foster  
14 home or adoptive home, to the investigating agency;

15 (D) To the board;

16 (E) To the Division of Children and Family Services of the  
17 Department of Human Services, including child welfare agency licensing  
18 specialists;

19 (F) To law enforcement or the prosecuting attorney upon  
20 request;

21 (G) To a grand jury or court upon a finding that  
22 information in the record is necessary for the determination of an issue  
23 before the court or grand jury; ~~or~~

24 (H)(i) To individual federal and state representatives and  
25 senators and their staff members with no redisclosure of information.

26 (ii) No disclosure shall be made to any committee or  
27 legislative body of any information that identifies by name or address any  
28 recipient of services; or

29 (I) To the attorney ad litem and court-appointed special  
30 advocate, the home study on the adoptive family selected by the department to  
31 adopt the juvenile.

32  
33 SECTION 3. Arkansas Code § 9-28-409 (e), concerning criminal  
34 background checks for persons who have direct and unsupervised contact with a  
35 child in the care of a child welfare agency, is amended to read as follows:

36 (e)(1) Except as provided in ~~subdivision (d)(2)~~ subdivisions (d)(2) or



1 (h)(1) of this section, no person who is required to have a criminal check  
2 under subdivision (b)(1) or (c)(1) of this section shall be eligible to have  
3 direct and unsupervised contact with a child in the care of a child welfare  
4 agency if that person has pleaded guilty or nolo contendere to or has been  
5 found guilty of any of the following offenses by any court in the State of  
6 Arkansas or of any similar offense by a court in another state or of any  
7 similar offense by a federal court unless the conviction was vacated or  
8 reversed:

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

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

12 (C) Manslaughter as prohibited in § 5-10-104;

13 (D) Negligent homicide as prohibited in § 5-10-105;

14 (E) Kidnapping as prohibited in § 5-11-102;

15 (F) False imprisonment in the first degree and false  
16 imprisonment in the second ~~degrees~~ degree as prohibited in §§ 5-11-103 and 5-  
17 11-104;

18 (G) Permanent detention or restraint as prohibited in § 5-  
19 11-106;

20 (H) Battery in the first degree, battery in the second  
21 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-  
22 202, and 5-13-203;

23 (I) Aggravated assault as prohibited in § 5-13-204;

24 (J) Assault in the first degree and assault in the second  
25 degree as prohibited in §§ 5-13-205 and 5-13-206;

26 (K) Terroristic threatening in the first degree and  
27 terroristic threatening in the second degree as prohibited in § 5-13-301(a)  
28 and (b);

29 (L) Any sexual offense as prohibited in § 5-14-101 et  
30 seq.;

31 (M) Permitting abuse of a child as prohibited in § 5-27-  
32 221;

33 (N) Endangering the welfare of a minor in the first degree  
34 and endangering the welfare of a minor in the second degree as prohibited in  
35 §§ 5-27-203 and 5-27-204;

36 (O) Contributing to the delinquency of a minor as

1 prohibited in § 5-27-205;

2 (P) Engaging children in sexually explicit conduct for use  
3 in visual or print medium, transportation of minors for prohibited sexual  
4 conduct, use of a child or consent to use of a child in sexual performance,  
5 and producing, directing, or promoting sexual performance by a child, as  
6 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

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

8 (R) Interference with visitation as prohibited in § 5-26-  
9 501;

10 (S) Interference with custody as prohibited in § 5-26-502;

11 (T) Engaging in conduct with respect to controlled  
12 substances as prohibited in § 5-64-401;

13 (U) Distribution to minors as prohibited in § 5-64-406;

14 (V) Public display of obscenity as prohibited in § 5-68-  
15 205;

16 (W) Prostitution as prohibited in § 5-70-102;

17 (X) Promoting prostitution in the first degree, promoting  
18 prostitution in the second degree, and promoting prostitution in the third  
19 degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

20 (Y) Computer child pornography as prohibited in § 5-27-  
21 603;

22 (Z) Computer exploitation of a child in the first degree  
23 as prohibited in § 5-27-605(a);

24 (AA) Criminal attempt, criminal complicity, criminal  
25 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-  
26 3-301, and 5-3-401 to commit any of the offenses listed in this section;

27 (BB) Any felony or any misdemeanor involving violence,  
28 threatened violence, or moral turpitude; or

29 (CC) Any former or future law of this or any other state  
30 or of the federal government which is substantially equivalent to one of the  
31 aforementioned offenses.

32 (2)(A) Any person who is required to have a criminal check under  
33 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo  
34 contendere to, or is found guilty of, any of the offenses listed in  
35 *subdivision (e)(1) of this section, unless the conviction was vacated or*  
36 *reversed, shall be absolutely disqualified to be an owner, operator,*

1 volunteer, foster parent, adoptive parent, member of an agency's board of  
 2 directors, or employee in a child welfare agency during the period of his or  
 3 her confinement, probation, or parole supervision.

4 (B) ~~Any~~ Except as provided in subdivision (h)(1) of this  
 5 section, any person who is required to have a criminal check under  
 6 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo  
 7 contendere to, or is found guilty of, any of the offenses listed in  
 8 subdivision (e)(1) of this section, unless the conviction was vacated or  
 9 reversed, shall be presumed to be disqualified to be an owner, operator,  
 10 volunteer, foster parent, adoptive parent, member of an agency's board of  
 11 directors, or employee in a child welfare agency after the completion of his  
 12 or her term of confinement, probation, or parole supervision. This  
 13 presumption can be rebutted in the following manner:

14 (i)(a) The applicant must petition the board to make  
 15 a determination that the applicant does not pose a risk of harm to any person  
 16 ~~served by the facility and is therefore qualified to serve in a child welfare~~  
 17 ~~agency.~~

18 (b) The applicant shall bear the burden of  
 19 making such a showing; and

20 (ii) The board in its discretion may permit an  
 21 applicant ~~to serve in a child welfare agency~~ to be an owner, operator,  
 22 volunteer, foster parent, adoptive parent, member of an agency's board of  
 23 directors, or an employee in a child welfare agency notwithstanding having  
 24 been convicted of an offense listed in this section upon making a  
 25 determination that the applicant does not pose a risk of harm to any person  
 26 served by the facility. In making this determination, the board shall  
 27 consider the following factors:

28 (a) The nature and severity of the crime;  
 29 (b) The consequences of the crime;  
 30 (c) The number and frequency of crimes;  
 31 (d) The relation between the crime and the  
 32 health, safety, and welfare of ~~persons served by a child welfare agency~~ any  
 33 person, such as:

34 (1) The age and vulnerability of victims  
 35 of the crime;  
 36 (2) The harm suffered by the victim; and

1 (3) The similarity between the victim  
2 and persons served by a child welfare agency;

3 (e) The time elapsed without a repeat of the  
4 same or similar event;

5 (f) Documentation of successful completion of  
6 training or rehabilitation pertinent to the incident; and

7 (g) Any other information that bears on the  
8 applicant's ability to care for children or any other relevant information.

9 (C) The board's decision to disqualify a person ~~serving in~~  
10 ~~a child welfare agency pursuant to~~ from being an owner, operator, volunteer,  
11 foster parent, adoptive parent, member of an agency's board of directors, or  
12 an employee in a child welfare agency under this section shall constitute the  
13 *final administrative agency action and shall not be subject to review.*

14 (h)(1) For the purposes of this section, an expunged record of a  
15 conviction or plea of guilty or nolo contendere to an offense listed in  
16 subdivision (e)(1) of this section shall not be considered a conviction,  
17 guilty plea, or nolo contendere to the offense unless the offense is also  
18 listed in subdivision (h)(2) of this section.

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

22 (A) Capital murder, as prohibited under § 5-10-101;

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

25 (C) Kidnapping, as prohibited under § 5-11-102;

26 (D) Rape, as prohibited under § 5-14-103;

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

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

32 (G) Incest, as prohibited under § 5-26-202;

33 (H) Arson, as prohibited under § 5-38-301;

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

36 (J) Adult abuse that constitutes a felony, as prohibited

1 under § 5-28-103.

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*/s/ Bright*

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*APPROVED: 4/06/2005*

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