

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 1923 of the Regular Session

1 State of Arkansas

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2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1466

4
5 By: Representative Verkamp

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8 **For An Act To Be Entitled**

9 AN ACT TO PROVIDE THAT CERTAIN EXPUNGED OFFENSES
10 DO NOT CAUSE DISQUALIFICATION FROM EMPLOYMENT,
11 LICENSURE, CERTIFICATION, OR OTHER ACTIVITIES FOR
12 PERSONS SUBJECT TO CRIMINAL BACKGROUND CHECKS
13 UNDER ARKANSAS CODE §§ 9-28-409, 17-27-313, 17-
14 87-312, 17-97-312, 17-103-307, 20-13-1106, 20-33-
15 205, 20-48-804, AND 21-15-103; AND FOR OTHER
16 PURPOSES.

17
18 **Subtitle**

19 AN ACT TO PROVIDE THAT EXPUNGED RECORDS
20 OF CERTAIN CRIMINAL OFFENSES DO NOT
21 CAUSE DISQUALIFICATION FROM EMPLOYMENT,
22 LICENSURE, CERTIFICATION, OR OTHER
23 ACTIVITIES.

24
25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27
28 *SECTION 1. Arkansas Code § 9-28-409 is amended to read as follows:*
29 *9-28-409. Criminal record and child maltreatment checks.*

30 *(a)(1) Each of the following persons in a child welfare agency shall*
31 *be checked with the child maltreatment central registry in his or her state*
32 *of residence and any state of residence in which the person has lived for the*
33 *past six (6) years and in the person's state of employment, if different, for*
34 *reports of child maltreatment in compliance with policy and procedures*
35 *promulgated by the Child Welfare Agency Review Board:*



1 (A) An employee having direct and unsupervised contact
2 with children;

3 (B) A volunteer having direct and unsupervised contact
4 with children;

5 (C) A foster parent and all household members age ten (10)
6 years and older;

7 (D) An adoptive parent and all household members age ten
8 (10) years and older;

9 (E) An owner having direct and unsupervised contact with
10 children; and

11 (F) A member of the agency's board of directors having
12 direct and unsupervised contact with children.

13 (2) The board shall have the authority to deny a license or
14 church-operated exemption to any applicant found to have any record of
15 founded child maltreatment in the official record of the registry.

16 (3)(A) Any person required to be checked under this section who
17 is found to have any record of child maltreatment in the official record of
18 the registry shall be reviewed by the owner or operator of the facility in
19 consultation with the board to determine appropriate corrective action
20 measures which would indicate, but are not limited to, training, probationary
21 employment, or nonselection for employment.

22 (B) The board shall also have the authority to deny a
23 license or church-operated exemption to an applicant who continues to employ
24 a person with any record of founded child maltreatment.

25 (4) All persons required to be checked with the registry under
26 this subsection shall repeat the check every two (2) years, except that
27 adoptive parents who reside in Arkansas shall repeat the check every year
28 pending court issuance of a final decree of adoption, at which point repeat
29 checks shall no longer be required.

30 (b)(1) Each of the following persons in a child welfare agency who has
31 lived in Arkansas continuously for six (6) years or more shall be checked
32 with the Identification Bureau of the Department of Arkansas State Police for
33 convictions of the offenses listed in this subchapter in compliance with
34 policy and procedures promulgated by the board:

35 (A) An employee having direct and unsupervised contact
36 with children;

1 (B) A volunteer having direct and unsupervised contact
2 with children;

3 (C) A foster parent and all household members age sixteen
4 (16) years and older;

5 (D) An owner having direct and unsupervised contact with
6 children; and

7 (E) A member of the agency's board of directors having
8 direct and unsupervised contact with children.

9 (2)(A) The owner or operator of a child welfare agency shall
10 maintain on file, subject to inspection by the board, evidence that
11 Department of Arkansas State Police criminal records checks have been
12 initiated on all persons required to be checked and the results of the
13 checks.

14 (B) Failure to maintain that evidence on file will be
15 prima facie grounds to revoke the license or church-operated exemption of the
16 owner or operator of the child welfare agency.

17 (3) All persons required to be checked with the Department of
18 Arkansas State Police under this subsection shall repeat the check every five
19 (5) years, except that adoptive parents shall not repeat the check after
20 court issuance of a final decree of adoption in the adoption case for which
21 the check was obtained.

22 (4) Adoptive parents shall complete background checks as
23 required by law.

24 (c)(1) Each of the following persons in a child welfare agency who has
25 not lived in Arkansas continuously for the past six (6) years shall be
26 checked with the Federal Bureau of Investigation for convictions of the
27 offenses listed in this subchapter, in compliance with federal law and
28 regulations and with policy and procedures promulgated by the board:

29 (A) An employee having direct and unsupervised contact
30 with children;

31 (B) A volunteer having direct and unsupervised contact
32 with children;

33 (C) A foster parent and all family members age sixteen
34 (16) years and older;

35 (D) An owner having direct and unsupervised contact with
36 children; and

1 (E) A member of the agency's board of directors having
2 direct and unsupervised contact with children.

3 (2)(A) The owner or operator of a child welfare agency shall
4 maintain on file, subject to inspection by the board, evidence that the
5 Federal Bureau of Investigation's criminal records checks have been initiated
6 on all persons required to be checked and the results of the checks.

7 (B) Failure to maintain that evidence on file will be
8 prima facie grounds to revoke the license or church-operated exemption of the
9 owner or operator of the child welfare agency.

10 (d)(1) Each person required to have a criminal records check under
11 this subchapter shall complete a criminal records check form developed by the
12 Department of Human Services and shall sign the form which contains the
13 following under oath before a notary public:

14 (A) Certification that the subject of the check consents
15 to the completion of the check;

16 (B) Certification that the subject of the check has not
17 been convicted of a crime and, if the subject of the check has been convicted
18 of a crime, contains a description of the crime and the particulars of the
19 conviction;

20 (C) Notification that the subject of the check may
21 challenge the accuracy and completeness of any information in any report and
22 obtain a prompt determination as to the validity of the challenge before a
23 final determination is made by the board with respect to his or her
24 employment status or licensing status;

25 (D) Notification that the subject of the check may be
26 denied a license or exemption to operate a child welfare agency or may be
27 denied unsupervised access to children in the care of a child welfare agency
28 due to information obtained by the check which indicates that the subject of
29 the check has been convicted of, or is under pending indictment for, a crime
30 listed in this subchapter; and

31 (E) Notification that any background check and the results
32 thereof shall be handled in accordance with the requirements of Pub. L. 92-
33 544.

34 (2) The owner or operator of the child welfare agency shall
35 submit the criminal records check form to the Identification Bureau of the
36 Department of Arkansas State Police for processing within ten (10) days of

1 hiring the employee, who shall remain under conditional employment until the
2 registry check and criminal records checks required under this subchapter are
3 completed.

4 (3) Nothing in this section shall be construed to prevent the
5 board from denying a license or exemption to an owner or preventing an
6 operator or employee in a child welfare agency from having unsupervised
7 access to children by reason of the pending appeal of a criminal conviction
8 or child maltreatment determination.

9 (4) In the event a legible set of fingerprints as determined by
10 the Department of Arkansas State Police and the Federal Bureau of
11 Investigation cannot be obtained after a minimum of three (3) attempts by
12 qualified law enforcement personnel, the board shall determine eligibility
13 based upon a name check by the Department of Arkansas State Police and the
14 Federal Bureau of Investigation.

15 (5)(A) An owner or operator of a child welfare agency shall not
16 be liable during a conditional period of service for hiring any person
17 required to have a background check pursuant to this subchapter who may be
18 subject to a charge of false swearing upon completion of central registry and
19 criminal records check.

20 (B)(i) Pursuant to this subchapter, false swearing shall
21 occur when a person while under oath provides false information or omits
22 information that the person knew or reasonably should have known was
23 material.

24 (ii) Lack of knowledge that information is material
25 is not a defense to a charge of false swearing.

26 (C) For purposes of this subchapter, false swearing is a
27 Class A misdemeanor.

28 (e)(1) Except as provided in ~~subdivision (d)(2)~~ subdivisions (d)(2) or
29 (h)(1) of this section, no person who is required to have a criminal check
30 under subdivision (b)(1) or (c)(1) of this section shall be eligible to have
31 direct and unsupervised contact with a child in the care of a child welfare
32 agency if that person has pleaded guilty or nolo contendere to or has been
33 found guilty of any of the following offenses by any court in the State of
34 Arkansas or of any similar offense by a court in another state or of any
35 similar offense by a federal court:

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

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

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

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

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

6 (F) False imprisonment in the first degree and false
7 imprisonment in the second degrees as prohibited in §§ 5-11-103 and 5-11-104;

8 (G) Permanent detention or restraint as prohibited in § 5-
9 11-106;

10 (H) Battery in the first degree, battery in the second
11 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-
12 202 and 5-13-203;

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

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

16 (K) Terroristic threatening in the first degree and
17 terroristic threatening in the second degree as prohibited in § 5-13-301(a)
18 and (b);

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

21 (M) Permitting abuse of a child as prohibited in § 5-27-
22 221;

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

26 (O) Contributing to the delinquency of a minor as
27 prohibited in § 5-27-205;

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

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

34 (R) Interference with visitation as prohibited in § 5-26-
35 501;

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

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

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

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

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

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

10 (Y) Computer child pornography as prohibited in § 5-27-
11 603;

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

14 (AA) Criminal attempt, criminal complicity, criminal
15 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
16 3-301, and 5-3-401 to commit any of the offenses listed in this section;

17 (BB) Any felony or any misdemeanor involving violence,
18 threatened violence, or moral turpitude; and

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

22 (2)(A) Any person who is required to have a criminal check under
23 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
24 contendere to, or is found guilty of, any of the offenses listed in
25 subdivision (e)(1) of this section shall be absolutely disqualified to be an
26 owner, operator, volunteer, foster parent, adoptive parent, member of an
27 agency's board of directors, or employee in a child welfare agency during the
28 period of his or her confinement, probation, or parole supervision.

29 (B) ~~Any~~ Except as provided in subdivision (h)(1) of this
30 section, any person who is required to have a criminal check under
31 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
32 contendere to, or is found guilty of, any of the offenses listed in
33 subdivision (e)(1) of this section shall be presumed to be disqualified to be
34 an owner, operator, volunteer, foster parent, adoptive parent, member of an
35 agency's board of directors, or employee in a child welfare agency after the
36 completion of his or her term of confinement, probation, or parole

1 supervision. This presumption can be rebutted in the following manner:

2 (i) The applicant must petition the board to make a
3 determination that the applicant does not pose a risk of harm to any person
4 served by the facility and is therefore qualified to serve in a child welfare
5 agency. The applicant shall bear the burden of making such a showing; and

6 (ii) The board in its discretion may permit an
7 applicant to serve in a child welfare agency notwithstanding having been
8 convicted of an offense listed in this section upon making a determination
9 that the applicant does not pose a risk of harm to any person served by the
10 facility. In making this determination, the board shall consider the
11 following factors:

12 (a) The nature and severity of the crime;

13 (b) The consequences of the crime;

14 (c) The number and frequency of crimes;

15 (d) The relation between the crime and the
16 health, safety, and welfare of persons served by a child welfare agency, such
17 as:

18 (1) The age and vulnerability of victims
19 of the crime;

20 (2) The harm suffered by the victim; and

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

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

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

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

29 (C) The board's decision to disqualify a person serving in
30 a child welfare agency pursuant to this section shall constitute the final
31 administrative agency action and shall not be subject to review.

32 (f)(1) No foster child in the custody of the Department of Human
33 Services shall be placed in the home of any foster or adoptive parent if the
34 criminal records check reveals a felony conviction for:

35 (A) Child abuse or neglect;

36 (B) Spousal abuse;

1 (C) A crime against children, including child pornography;
2 or

3 (D) A crime involving violence, including rape, sexual
4 assault, or homicide, but not including other physical assault or battery.

5 (2) No foster child in the custody of another state agency who
6 is placed in Arkansas shall be placed in any home if the criminal records
7 check reveals a felony conviction of an adult in the home for:

8 (A) Child abuse or neglect;

9 (B) Spousal abuse;

10 (C) A crime against children, including child pornography;
11 or

12 (D) A crime involving violence, including rape, sexual
13 assault, or homicide, but not including other physical assault or battery.

14 (g)(1) No foster child in the custody of the Department of Human
15 Services shall be placed in the home of any foster or adoptive parent if the
16 criminal record check reveals a felony conviction for physical assault,
17 battery, or a drug-related offense if the offense was committed within the
18 past five (5) years.

19 (2) No foster child in the custody of another state agency who
20 is placed in Arkansas shall be placed in any home if the criminal record
21 check reveals a felony conviction of any adult in the home for physical
22 assault, battery, or a drug-related offense if the offense was committed
23 within the past five (5) years.

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

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

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

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

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

36 (D) Rape, as prohibited in § 5-14-103;

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

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

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

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

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

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

12
13 SECTION 2. Arkansas Code § 17-87-312 is amended to read as follows:
14 17-87-312. Criminal background checks.

15 (a) Each first-time applicant for a license issued by the Arkansas
16 State Board of Nursing shall apply to the Identification Bureau of the
17 Department of Arkansas State Police for a state and national criminal
18 background check, to be conducted by the Federal Bureau of Investigation.

19 (b) The check shall conform to the applicable federal standards and
20 shall include the taking of fingerprints.

21 (c) The applicant shall sign a release of information to the board and
22 shall be responsible to the Department of Arkansas State Police for the
23 payment of any fee associated with the criminal background check.

24 (d) Upon completion of the criminal background check, the
25 Identification Bureau of the Department of Arkansas State Police shall
26 forward all information obtained concerning the applicant in the commission
27 of any offense listed in subsection (f) of this section to the board.

28 (e) [Repealed].

29 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
30 person shall be eligible to receive or hold a license issued by the board if
31 that person has pleaded guilty or nolo contendere to, or has been found
32 guilty of, any of the following offenses by any court in the State of
33 Arkansas or of any similar offense by a court in another state or of any
34 similar offense by a federal court:

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

36 (2) Murder in the first degree and second degree, as prohibited

1 in §§ 5-10-102 and 5-10-103;

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

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

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

5 (6) False imprisonment in the first degree, as prohibited in §

6 5-11-103;

7 (7) Permanent detention or restraint, as prohibited in § 5-11-

8 106;

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

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

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

12 (11) Aggravated assault, as prohibited in § 5-13-204;

13 (12) Introduction of a controlled substance into the body of

14 another person, as prohibited in § 5-13-210;

15 (13) Terroristic threatening in the first degree, as prohibited

16 in § 5-13-301;

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

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

19 (16) Sexual assault in the first degree, second degree, third

20 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

21 (17) Incest, as prohibited in § 5-26-202;

22 (18) Offenses against the family, as prohibited in §§ 5-26-303 -

23 5-26-306;

24 (19) Endangering the welfare of an incompetent person in the

25 first degree, as prohibited in § 5-27-201;

26 (20) Endangering the welfare of a minor in the first degree, as

27 prohibited in § 5-27-203;

28 (21) Permitting abuse of a child, as prohibited in § 5-27-

29 221(a)(1) and (3);

30 (22) Engaging children in sexually explicit conduct for use in

31 visual or print media, transportation of minors for prohibited sexual

32 conduct, pandering or possessing visual or print medium depicting sexually

33 explicit conduct involving a child, or use of a child or consent to use of a

34 child in a sexual performance by producing, directing, or promoting a sexual

35 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,

36 and 5-27-403;

- 1 (23) Felony adult abuse, as prohibited in § 5-28-103;
2 (24) Theft of property, as prohibited in § 5-36-103;
3 (25) Theft by receiving, as prohibited in § 5-36-106;
4 (26) Arson, as prohibited in § 5-38-301;
5 (27) Burglary, as prohibited in § 5-39-201;
6 (28) Felony violation of the Uniform Controlled Substances Act,
7 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
8 (29) Promotion of prostitution in the first degree, as
9 prohibited in § 5-70-104;
10 (30) Stalking, as prohibited in § 5-71-229;
11 (31) Criminal attempt, criminal complicity, criminal
12 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
13 5-3-301, and 5-3-401, to commit any of the offenses listed in this
14 subsection;
15 (32) Computer child pornography, as prohibited in § 5-27-603;
16 and
17 (33) Computer exploitation of a child in the first degree, as
18 prohibited in § 5-27-605.
- 19 (g)(1) The board may issue a nonrenewable temporary permit for
20 licensure to a first-time applicant pending the results of the criminal
21 background check. The permit shall be valid for no more than six (6) months.
- 22 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
23 section, upon receipt of information from the Identification Bureau of the
24 Department of Arkansas State Police that the person holding the letter of
25 provisional licensure has pleaded guilty or nolo contendere to, or has been
26 found guilty of, any offense listed in subsection (f) of this section, the
27 board shall immediately revoke the provisional license.
- 28 (h)(1) The provisions of subsection (f) and subdivision (g)(2) of this
29 section may be waived by the board upon the request of:
- 30 (A) An affected applicant for licensure; or
31 (B) The person holding a license subject to revocation.
- 32 (2) Circumstances for which a waiver may be granted shall
33 include, but not be limited to, the following:
- 34 (A) The age at which the crime was committed;
35 (B) The circumstances surrounding the crime;
36 (C) The length of time since the crime;

1 (D) Subsequent work history;
2 (E) Employment references;
3 (F) Character references; and
4 (G) Other evidence demonstrating that the applicant does
5 not pose a threat to the health or safety of the public.

6 (i)(1) Any information received by the board from the Identification
7 Bureau of the Department of Arkansas State Police pursuant to this section
8 shall not be available for examination except by:

9 (A) The affected applicant for licensure or his or her
10 authorized representative; or

11 (B) The person whose license is subject to revocation or
12 his or her authorized representative.

13 (2) No record, file, or document shall be removed from the
14 custody of the Department of Arkansas State Police.

15 (j) Any information made available to the affected applicant for
16 licensure or the person whose license is subject to revocation shall be
17 information pertaining to that person only.

18 (k) Rights of privilege and confidentiality established in this
19 section shall not extend to any document created for purposes other than this
20 background check.

21 (l) The board shall adopt the necessary rules and regulations to fully
22 implement the provisions of this section.

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

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

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

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

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

35 (D) Rape, as prohibited in § 5-14-103;

36 (E) Sexual assault in the first degree and second degree,

1 as prohibited in §§ 5-14-124 and 5-14-125;

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

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

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

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

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

11
12 SECTION 3. Arkansas Code § 17-97-312 is amended to read as follows:
13 17-97-312. Criminal background checks.

14 (a) Each first-time applicant for a license issued by the Arkansas
15 Psychology Board shall be required to apply to the Identification Bureau of
16 the Department of Arkansas State Police for a state and national criminal
17 background check to be conducted by the Federal Bureau of Investigation.

18 (b) The check shall conform to the applicable federal standards and
19 shall include the taking of fingerprints.

20 (c) The applicant shall sign a release of information to the board and
21 shall be responsible to the Department of Arkansas State Police for the
22 payment of any fee associated with the criminal background check.

23 (d) Upon completion of the criminal background check, the
24 Identification Bureau of the Department of Arkansas State Police shall
25 forward to the board all information obtained concerning the applicant in the
26 commission of any offense listed in subsection (f) of this section.

27 (e) At the conclusion of any background check required by this
28 section, the Identification Bureau of the Department of Arkansas State Police
29 shall promptly destroy the fingerprint card of the applicant.

30 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
31 person shall be eligible to receive or hold a license issued by the board if
32 that person has pleaded guilty or nolo contendere to, or been found guilty
33 of, any of the following offenses by any court in the State of Arkansas or of
34 any similar offense by a court in another state or of any similar offense by
35 a federal court:

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

- 1 (2) *Murder in the first degree and second degree, as prohibited*
2 *in §§ 5-10-102 and 5-10-103;*
- 3 (3) *Manslaughter, as prohibited in § 5-10-104;*
- 4 (4) *Negligent homicide, as prohibited in § 5-10-105;*
- 5 (5) *Kidnapping, as prohibited in § 5-11-102;*
- 6 (6) *False imprisonment in the first degree, as prohibited in §*
7 *5-11-103;*
- 8 (7) *Permanent detention or restraint, as prohibited in § 5-11-*
9 *106;*
- 10 (8) *Robbery, as prohibited in § 5-12-102;*
- 11 (9) *Aggravated robbery, as prohibited in § 5-12-103;*
- 12 (10) *Battery in the first degree, as prohibited in § 5-13-201;*
- 13 (11) *Aggravated assault, as prohibited in § 5-13-204;*
- 14 (12) *Introduction of controlled substance into body of another*
15 *person, as prohibited in § 5-13-210;*
- 16 (13) *Terroristic threatening in the first degree, as prohibited*
17 *in § 5-13-301;*
- 18 (14) *Rape, as prohibited in § 5-14-103;*
- 19 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
- 20 (16) *Sexual assault in the first degree, second degree, third*
21 *degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;*
- 22 (17) *Incest, as prohibited in § 5-26-202;*
- 23 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
24 *5-26-306;*
- 25 (19) *Endangering the welfare of an incompetent person in the*
26 *first degree, as prohibited in § 5-27-201;*
- 27 (20) *Endangering the welfare of a minor in the first degree, as*
28 *prohibited in § 5-27-203;*
- 29 (21) *Permitting abuse of a child, as prohibited in § 5-27-*
30 *221(a)(1) and (3);*
- 31 (22) *Engaging children in sexually explicit conduct for use in*
32 *visual or print media, transportation of minors for prohibited sexual*
33 *conduct, pandering or possessing visual or print medium depicting sexually*
34 *explicit conduct involving a child, or use of a child or consent to use of a*
35 *child in a sexual performance by producing, directing, or promoting a sexual*
36 *performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,*

1 and 5-27-403;

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

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

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

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

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

7 (28) Felony violation of the Uniform Controlled Substances Act,
8 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

12 (31) Criminal attempt, criminal complicity, criminal
13 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
14 5-3-301, and 5-3-401, to commit any of the offenses listed in this
15 subsection;

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

17 and

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

20 (g)(1) The board may issue a six-month nonrenewable letter of
21 provisional eligibility for licensure to a first-time applicant pending the
22 results of the criminal background check.

23 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
24 section, upon receipt of information from the Identification Bureau of the
25 Department of Arkansas State Police that the person holding a letter of
26 provisional licensure has pleaded guilty or nolo contendere to, or been found
27 guilty of, any offense listed in subsection (f) of this section, the board
28 shall immediately revoke the provisional license.

29 (h)(1) The provisions of subsection (f) and subdivision (g)(2) of this
30 section may be waived by the board upon the request of:

31 (A) An affected applicant for licensure; or

32 (B) The person holding a license subject to revocation.

33 (2) Circumstances for which a waiver may be granted shall
34 include, but not be limited to, the following:

35 (A) The age at which the crime was committed;

36 (B) The circumstances surrounding the crime;

1 (C) The length of time since the crime;

2 (D) Subsequent work history;

3 (E) Employment references;

4 (F) Character references; and

5 (G) Other evidence demonstrating that the applicant does
6 not pose a threat to the health or safety of children.

7 (i)(1) Any information received by the board from the Identification
8 Bureau of the Department of Arkansas State Police pursuant to this section
9 shall not be available for examination except by the affected applicant for
10 licensure or his or her authorized representative or the person whose license
11 is subject to revocation, or his or her authorized representative.

12 (2) No record, file, or document shall be removed from the
13 custody of the department.

14 (j) Any information made available to the affected applicant for
15 licensure or the person whose license is subject to revocation shall be
16 information pertaining to that person only.

17 (k) Rights of privilege and confidentiality established herein shall
18 not extend to any document created for purposes other than this background
19 check.

20 (l) The board shall adopt the necessary rules and regulations to fully
21 implement the provisions of this section.

22 (m)(1) For purposes of this section, an expunged record of a
23 conviction or plea of guilty or nolo contendere to an offense listed in
24 subsection (f) of this section shall not be considered a conviction, guilty
25 plea, or nolo contendere plea to the offense unless the offense is also
26 listed in subdivision (m)(2) of this section.

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

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

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

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

34 (D) Rape, as prohibited in § 5-14-103;

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

1 (F) Endangering the welfare of a minor in the first degree
2 and endangering the welfare of a minor in the second degree, as prohibited in
3 §§ 5-27-203 and 5-27-204;

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

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

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

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

10
11 SECTION 4. Arkansas Code § 17-103-307 is amended to read as follows:
12 17-103-307. Criminal background checks.

13 (a) Each first-time applicant for a license issued by the Arkansas
14 Social Work Licensing Board shall be required to apply to the Identification
15 Bureau of the Department of Arkansas State Police for a state and national
16 criminal background check, to be conducted by the Federal Bureau of
17 Investigation.

18 (b) The check shall conform to the applicable federal standards and
19 shall include the taking of fingerprints.

20 (c) The applicant shall sign a release of information to the board and
21 shall be responsible to the Department of Arkansas State Police for the
22 payment of any fee associated with the criminal background check.

23 (d) Upon completion of the criminal background check, the
24 Identification Bureau of the Department of Arkansas State Police shall
25 forward all information obtained concerning the applicant in the commission
26 of any offense listed in subsection (f) of this section to the board.

27 (e) At the conclusion of any background check required by this
28 section, the Identification Bureau of the Department of Arkansas State Police
29 shall promptly destroy the fingerprint card of the applicant.

30 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
31 person shall be eligible to receive or hold a license issued by the board if
32 that person has pleaded guilty or nolo contendere to, or been found guilty
33 of, any of the following offenses by any court in the State of Arkansas or of
34 any similar offense by a court in another state or of any similar offense by
35 a federal court:

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

- 1 (2) *Murder in the first degree and second degree, as prohibited*
2 *in §§ 5-10-102 and 5-10-103;*
- 3 (3) *Manslaughter, as prohibited in § 5-10-104;*
- 4 (4) *Negligent homicide, as prohibited in § 5-10-105;*
- 5 (5) *Kidnapping, as prohibited in § 5-11-102;*
- 6 (6) *False imprisonment in the first degree, as prohibited in §*
7 *5-11-103;*
- 8 (7) *Permanent detention or restraint, as prohibited in § 5-11-*
9 *106;*
- 10 (8) *Robbery, as prohibited in § 5-12-102;*
- 11 (9) *Aggravated robbery, as prohibited in § 5-12-103;*
- 12 (10) *Battery in the first degree, as prohibited in § 5-13-201;*
- 13 (11) *Aggravated assault, as prohibited in § 5-13-204;*
- 14 (12) *Introduction of controlled substance into body of another*
15 *person, as prohibited in § 5-13-210;*
- 16 (13) *Terroristic threatening in the first degree, as prohibited*
17 *in § 5-13-301;*
- 18 (14) *Rape, as prohibited in § 5-14-103;*
- 19 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
- 20 (16) *Sexual assault in the first degree, second degree, third*
21 *degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;*
- 22 (17) *Incest, as prohibited in § 5-26-202;*
- 23 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
24 *5-26-306;*
- 25 (19) *Endangering the welfare of an incompetent person in the*
26 *first degree, as prohibited in § 5-27-201;*
- 27 (20) *Endangering the welfare of a minor in the first degree, as*
28 *prohibited in § 5-27-203;*
- 29 (21) *Permitting abuse of a child, as prohibited in § 5-27-*
30 *221(a)(1) and (3);*
- 31 (22) *Engaging children in sexually explicit conduct for use in*
32 *visual or print media, transportation of minors for prohibited sexual*
33 *conduct, pandering or possessing visual or print medium depicting sexually*
34 *explicit conduct involving a child, or use of a child or consent to use of a*
35 *child in a sexual performance by producing, directing, or promoting a sexual*
36 *performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,*

1 and 5-27-403;

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

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

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

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

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

7 (28) Felony violation of the Uniform Controlled Substances Act,
8 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

12 (31) Criminal attempt, criminal complicity, criminal
13 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
14 5-3-301, and 5-3-401, to commit any of the offenses listed in this
15 subsection;

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

17 and

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

20 (g)(1) The board may issue a six-month nonrenewable letter of
21 provisional eligibility for licensure to a first-time applicant pending the
22 results of the criminal background check.

23 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
24 section, upon receipt of information from the Identification Bureau of the
25 Department of Arkansas State Police that the person holding such a letter of
26 provisional licensure has pleaded guilty or nolo contendere to, or been found
27 guilty of, any offense listed in subsection (f) of this section, the board
28 shall immediately revoke the provisional license.

29 (h)(1) The provisions of subsection (f) and subdivision (g)(2) of this
30 section may be waived by the board upon the request of:

31 (A) An affected applicant for licensure; or

32 (B) The person holding a license subject to revocation.

33 (2) Circumstances for which a waiver may be granted shall
34 include, but not be limited to, the following:

35 (A) The age at which the crime was committed;

36 (B) The circumstances surrounding the crime;

1 (C) The length of time since the crime;

2 (D) Subsequent work history;

3 (E) Employment references;

4 (F) Character references; and

5 (G) Other evidence demonstrating that the applicant does
6 not pose a threat to the health or safety of children.

7 (i) Any information received by the board from the Identification
8 Bureau of the Department of Arkansas State Police pursuant to this section
9 shall not be available for examination except by the affected applicant for
10 licensure, his or her authorized representative, or the person whose license
11 is subject to revocation or his or her authorized representative. No record,
12 file, or document shall be removed from the custody of the Department of
13 Arkansas State Police.

14 (j) Any information made available to the affected applicant for
15 licensure or the person whose license is subject to revocation shall be
16 information pertaining to that person only.

17 (k) Rights of privilege and confidentiality established in this
18 section shall not extend to any document created for purposes other than this
19 background check.

20 (l) The board shall adopt the necessary rules and regulations to fully
21 implement the provisions of this section.

22 (m)(1) For purposes of this section, an expunged record of a
23 conviction or plea of guilty or nolo contendere to an offense listed in
24 subsection (f) of this section shall not be considered a conviction, guilty
25 plea, or nolo contendere plea to the offense unless the offense is also
26 listed in subdivision (m)(2) of this section.

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

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

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

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

34 (D) Rape, as prohibited in § 5-14-103;

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

1 (F) Endangering the welfare of a minor in the first degree
2 and endangering the welfare of a minor in the second degree, as prohibited in
3 §§ 5-27-203 and 5-27-204;

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

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

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

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

10
11 SECTION 5. Arkansas Code § 20-13-1106 is amended to read as follows:
12 20-13-1106. Disqualifying offenses - Waiver.

13 (a) ~~The~~ Except as provided in subdivision (e)(1) of this section, the
14 Division of EMS and Trauma Systems shall issue a determination that a person
15 is disqualified from certification or recertification if the person has been
16 found guilty of or has pled guilty or nolo contendere to any of the offenses
17 listed in subsection (b) of this section. However, the division will forward
18 a request for a waiver to the Director of the Department of Health on all
19 applicants who have been convicted of the crimes listed in subsection (b) of
20 this section if five (5) years have passed since the conviction, if five (5)
21 years have passed since release from custodial confinement, or if the
22 applicants are currently certified emergency medical technicians, prior to
23 making the final determination on certification or recertification. These
24 individuals will not be suspended prior to the director's making the final
25 determination.

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

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

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

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

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

32 (6) False imprisonment in the first degree, as prohibited in §
33 5-11-103;

34 (7) Permanent detention or restraint, as prohibited in § 5-11-
35 106;

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

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

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

2 (31) *Criminal attempt, criminal complicity, criminal*
3 *solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,*
4 *5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection*
5 *(b);*

6 (32) *Fourth or subsequent driving while intoxicated violations*
7 *which constitute felony offenses under § 5-65-111(b)(3) and (4);*

8 (33) *Computer child pornography, as prohibited in § 5-27-603;*
9 *and*

10 (34) *Computer exploitation of a child in the first degree, as*
11 *prohibited in § 5-27-605.*

12 (c) *An applicant shall not be disqualified from certification or*
13 *recertification when the applicant has been found guilty of or has pled*
14 *guilty or nolo contendere to a misdemeanor if the offense did not involve*
15 *exploitation of an adult, abuse of a person, neglect of a person, or sexual*
16 *contact.*

17 (d)(1) *The provisions of this section may be waived by the Department*
18 *of Health upon written request by the person who is the subject of the*
19 *criminal history check.*

20 (2) *The written request for waiver must be mailed to the*
21 *director within fifteen (15) calendar days after receipt of the determination*
22 *by the division.*

23 (3) *Factors to be considered before granting a waiver shall*
24 *include, but not be limited to:*

25 (A) *The age at which the crime was committed;*

26 (B) *The circumstances surrounding the crime;*

27 (C) *The length of time since the adjudication of guilt;*

28 (D) *The person's subsequent work history;*

29 (E) *The person's employment references;*

30 (F) *The person's character references; and*

31 (G) *Any other evidence demonstrating that the person does*
32 *not pose a threat to the health or safety of persons to be cared for.*

33 (e)(1) For purposes of this section, an expunged record of a
34 conviction or plea of guilty or nolo contendere to an offense listed in
35 subsection (b) of this section shall not be considered a conviction, guilty
36 plea, or nolo contendere plea to the offense unless the offense is also

1 listed in subdivision (e)(2) of this section.

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

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

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

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

9 (D) Rape, as prohibited in § 5-14-103;

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

12 (F) Endangering the welfare of a minor in the first degree
13 and endangering the welfare of a minor in the second degree, as prohibited in
14 §§ 5-27-203 and 5-27-204;

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

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

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

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

21
22 SECTION 6. Arkansas Code § 20-33-205 is amended to read as follows:

23 20-33-205. Provisional licenses - Disqualification from employment -
24 Resubmission of applications - Denial or revocation - Penalties.

25 (a) Except as provided in ~~subsection (e)~~ subsections (c), (d), or (f)
26 of this section:

27 (1) A licensing agency shall issue a forty-five-day provisional
28 license to a qualified entity whose operator has been found guilty or has
29 pleaded guilty or nolo contendere to any of the offenses listed in subsection
30 (b) of this section;

31 (2) A licensing agency shall issue a determination that a person
32 is disqualified from employment with a qualified entity if the person has
33 been found guilty or pleaded guilty or nolo contendere to any of the offenses
34 listed in subsection (b) of this section; and

35 (3)(A) A qualified entity shall not knowingly employ a person
36 who has pleaded guilty or nolo contendere to or has been found guilty of any

1 of the offenses listed in subsection (b) of this section by any court in the
2 State of Arkansas or of any similar offense by a court in another state or of
3 any similar offense by a federal court.

4 (B) Except as provided in ~~subsection (e)~~ subsections (c),
5 (d), or (f) of this section:

6 (i) A licensing agency shall issue a forty-five-day
7 provisional license to a qualified entity whose operator has been found
8 guilty of or pleaded guilty or nolo contendere to any of the offenses listed
9 in subsection (b) of this section; and

10 (ii) A licensing agency shall issue a determination
11 that a person is disqualified from employment with a qualified entity if the
12 person has been found guilty of or pleaded guilty or nolo contendere to any
13 of the offenses listed in subsection (b) of this section. A requesting agency
14 shall issue a determination that a person or ElderChoices provider is
15 disqualified from providing care to the elderly or to an individual with a
16 disability, or both, if the person or provider has been found guilty of or
17 pleaded guilty or nolo contendere to any of the offenses listed in subsection
18 (b) of this section.

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

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

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

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

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

25 (6) False imprisonment in the first degree, as prohibited in §
26 5-11-103;

27 (7) Permanent detention or restraint, as prohibited in § 5-11-
28 106;

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

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

31 (10) Battery, as prohibited in §§ 5-13-201 - 5-13-203;

32 (11) Aggravated assault, as prohibited in § 5-13-204;

33 (12) Introduction of controlled substance into body of another
34 person, as prohibited in § 5-13-210;

35 (13) Terroristic threatening in the first degree, as prohibited
36 in § 5-13-301;

- 1 (14) Rape, as prohibited in § 5-14-103;
- 2 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 3 (16) Sexual assault in the first degree, second degree, third
4 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 5 (17) Incest, as prohibited in § 5-26-202;
- 6 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
7 5-26-306;
- 8 (19) Endangering the welfare of incompetent person in the first
9 degree, as prohibited in § 5-27-201;
- 10 (20) Endangering the welfare of a minor in the first degree, as
11 prohibited in § 5-27-203;
- 12 (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1)
13 and (3);
- 14 (22) Engaging children in sexually explicit conduct for use in
15 visual or print media, transportation of minors for prohibited sexual
16 conduct, pandering or possessing visual or print medium depicting sexually
17 explicit conduct involving a child, or use of a child or consent to use of a
18 child in a sexual performance by producing, directing, or promoting a sexual
19 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,
20 and 5-27-403;
- 21 (23) Felony adult abuse, as prohibited by § 5-28-103;
- 22 (24) Theft of property, as prohibited in § 5-36-103;
- 23 (25) Theft by receiving, as prohibited in § 5-36-106;
- 24 (26) Arson, as prohibited in § 5-38-301;
- 25 (27) Burglary, as prohibited in § 5-39-201;
- 26 (28) Felony violation of the Uniform Controlled Substances Act,
27 § 5-64-101 et seq., as prohibited in § 5-64-401;
- 28 (29) Promotion of prostitution in the first degree, as
29 prohibited in § 5-70-104;
- 30 (30) Stalking, as prohibited in § 5-71-229;
- 31 (31) Criminal attempt, criminal complicity, criminal
32 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
33 5-3-301, and 5-3-401, to commit any of the offenses listed in this
34 subsection;
- 35 (32) Forgery, as prohibited in § 5-37-201;
- 36 (33) Breaking or entering, as prohibited in § 5-39-202;

1 (34) Obtaining a controlled substance by fraud, as prohibited in
2 § 5-64-403;

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

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

7 (c) A qualified entity that is issued a provisional license based on
8 the criminal history of the operator may resubmit the application for
9 licensure with a new operator. If the qualified entity does not resubmit the
10 application within fifteen (15) days of the issuance of the provisional
11 license, then the qualified entity's license shall be immediately denied or
12 revoked.

13 (d)(1) The provisions of this section shall not be waived by the
14 licensing or requesting agency.

15 (2)(A) Except as provided in subdivision (d)(2)(B) of this
16 section, a conviction ~~for an~~ or plea of guilty or nolo contendere for a
17 felony or misdemeanor offense listed in subsection (b) of this section shall
18 not disqualify an applicant for employment if the date of conviction of the
19 offense is at least ten (10) years from the date of the application and the
20 individual has no criminal convictions of any type or nature during the ten-
21 year period. ~~To the extent that there is any conflict with § 17-1-103, this~~
22 ~~section shall be deemed to supersede § 17-1-103.~~

23 (B) Because of the serious nature of the offenses and the
24 close relationship to the type of work that is to be performed, the following
25 shall result in permanent disqualification of employment:

26 (i) Capital murder, as prohibited in § 5-10-101;

27 (ii) Murder in the first degree and murder in the
28 second degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

30 (iv) Rape, as prohibited in § 5-14-103;

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

33 (vi) Endangering the welfare of incompetent person
34 in the first degree, as prohibited in § 5-27-201;

35 (vii) Felony adult abuse, as prohibited by § 5-28-
36 103; and

1 (viii) Arson, as prohibited in § 5-38-301.

2 (e)(1) A qualified entity shall not be disqualified from licensure
3 when the operator has been found guilty of or has pleaded guilty or nolo
4 contendere to a misdemeanor if the offense did not involve exploitation of an
5 adult, abuse of a person, neglect of a person, theft, or sexual contact.

6 (2) An applicant, ElderChoices provider, or employee shall not
7 be disqualified from permanent employment or providing care to the elderly or
8 an individual with a disability, or both, when the applicant, provider, or
9 employee has been found guilty of or has pleaded guilty or nolo contendere to
10 a misdemeanor if the offense did not involve exploitation of an adult, abuse
11 of a person, neglect of a person, theft, or sexual contact.

12 (f) For purposes of this section, an expunged record of a conviction
13 or plea of guilty or nolo contendere to an offense listed in subsection (b)
14 of this section shall not be considered a conviction, guilty plea, or nolo
15 contendere plea to the offense unless the offense is also listed in
16 subdivision (d)(2)(B) of this section.

17 ~~(f)~~(g) If an operator or qualified entity fails or refuses to
18 cooperate in obtaining criminal records checks, such circumstances shall be
19 grounds to deny or revoke the qualified entity's license or other operating
20 authority, provided the process of obtaining criminal records checks shall
21 not delay the process of the application for a license or other operational
22 authority.

23 ~~(g)~~(h) Any unlicensed qualified entity violating this subchapter shall
24 be guilty of a Class A misdemeanor for each violation.

25 (i) To the extent that there is any conflict with § 17-1-103, this
26 section shall supersede § 17-1-103.

27
28 SECTION 7. Arkansas Code § 20-48-804 is amended to read as follows:

29 20-48-804. Disqualification from employment - Denial or revocation -
30 Penalties.

31 (a)(1) A Except as provided in subsection (f) of this section, a
32 licensing agency shall issue a determination that a person is disqualified
33 from employment with a service provider if the person has been found guilty
34 of or pleaded guilty or nolo contendere to any of the offenses listed in
35 subsection (b) of this section.

36 (2) A Except as provided in subsection (f) of this section, a

1 service provider shall not knowingly employ a person who has pleaded guilty
2 or nolo contendere to or has been found guilty of any of the offenses listed
3 in subsection (b) of this section by any court in the State of Arkansas or of
4 any similar offense by a court in another state or of any similar offense by
5 a federal court.

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

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

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

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

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

12 (6) False imprisonment in the first degree, as prohibited in §
13 5-11-103;

14 (7) Permanent detention or restraint, as prohibited in § 5-11-
15 106;

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

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

18 (10) Battery, as prohibited in §§ 5-13-201 - 5-13-203;

19 (11) Aggravated assault, as prohibited in § 5-13-204;

20 (12) Introduction of controlled substance into body of another
21 person, as prohibited in § 5-13-210;

22 (13) Terroristic threatening in the first degree, as prohibited
23 in § 5-13-301;

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

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

26 (16) Sexual assault in the first degree, second degree, third
27 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

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

29 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
30 5-26-306;

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

33 (20) Endangering the welfare of a minor in the first degree, as
34 prohibited in § 5-27-203;

35 (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1)
36 and (3);

1 (22) *Engaging children in sexually explicit conduct for use in*
2 *visual or print media, transportation of minors for prohibited sexual*
3 *conduct, pandering or possessing visual or print medium depicting sexually*
4 *explicit conduct involving a child, or use of a child or consent to use of a*
5 *child in a sexual performance by producing, directing, or promoting a sexual*
6 *performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-*
7 *27-402, and 5-27-403;*

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

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

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

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

12 (27) *Felony violation of the Uniform Controlled Substances Act,*
13 *§ 5-64-101 et seq., as prohibited in § 5-64-401;*

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

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

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

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

19 (32) *Breaking or entering, as prohibited in § 5-39-202;*

20 (33) *Obtaining a controlled substance by fraud, as prohibited in*
21 *§ 5-64-403;*

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

26 (35) *Computer child pornography, as prohibited in § 5-27-603;*
27 *and*

28 (36) *Computer exploitation of a child in the first degree, as*
29 *prohibited in § 5-27-605.*

30 (c)(1) *The provisions of this section shall not be waived by the*
31 *licensing or requesting agency. Except as provided in subdivision (c)(2) of*
32 *this section, one (1) conviction for an offense listed in subsection (b) of*
33 *this section shall not disqualify an applicant for employment if the date of*
34 *the conviction is at least ten (10) years prior to the date of the*
35 *application and the individual has had no criminal convictions of any type or*
36 *nature during the ten-year period.*

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

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

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

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

8 (D) Rape, as prohibited in § 5-14-103;

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

11 (F) Endangering the welfare of an incompetent person in
12 the first degree, as prohibited in § 5-27-201;

13 (G) Felony adult abuse, as prohibited in § 5-28-103; and

14 (H) Arson, as prohibited in § 5-38-301.

15 (3) An applicant or employee shall not be disqualified from
16 permanent employment if the applicant or employee has been found guilty of or
17 has pleaded guilty or nolo contendere to a misdemeanor if the offense did not
18 involve exploitation of an adult, abuse of a person, neglect of a person,
19 theft, or sexual contact.

20 (d) If a service provider fails or refuses to cooperate in obtaining
21 criminal history records checks, those circumstances shall be grounds to deny
22 or revoke the service provider's license or other operating authority.

23 (e) Any service provider violating this subchapter shall be guilty of
24 a Class A misdemeanor for each violation.

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

30
31 SECTION 8. Arkansas Code § 21-15-103 is amended to read as follows:

32 21-15-103. Deadline - Scope of check - Report - Notice - Discharge.

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

1 1, 2000.

2 (B) The rule shall require incumbent employees to apply
3 for criminal history checks in conjunction with the employee's anniversary of
4 employment or any time before that date.

5 (2) State agencies shall ensure that all employees in designated
6 positions will have applied for central registry checks by October 1, 2002,
7 and shall adopt a rule that prescribes how central registry checks on
8 incumbent employees will be phased in over the period of time prior to July
9 1, 2002. The rule shall require incumbent employees to apply for central
10 registry checks in conjunction with the employee's anniversary of employment
11 or any time before that date.

12 (3) In accordance with subdivisions (a)(1) and (2) of this
13 section, each employee of a state agency in a designated position shall
14 complete a criminal history check form and a central registry check form
15 obtained from the state agency and shall submit the form to the state agency.
16 The state agency shall forward:

17 (A)(i) The criminal history check form to the
18 Identification Bureau of the Department of Arkansas State Police.

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

21 (B)(i) The central registry check to the Child
22 Maltreatment Central Registry, the Adult Abuse Central Registry, and the
23 Certified Nurses Assistants Central Registry to review the databases.

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

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

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

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

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

3 (B) If the state agency determines that an employee is
4 disqualified from employment, then the state agency shall discharge the
5 employee.

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

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

14 (f) A state agency shall inform all employees in designated positions
15 that:

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

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

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

20 (B) Central registry report from the registries.

21 (g) A Except as provided in subdivision (h)(1) of this section, a
22 state agency shall discharge from employment in a designated position any
23 person who has pleaded guilty or nolo contendere to, or been found guilty of,
24 any of the following offenses by any court in the State of Arkansas or of any
25 similar offense by a court in another state or of any similar offense by a
26 federal court, but only after an opportunity for a hearing conducted in
27 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et
28 seq.:

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

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

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

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

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

35 (6) False imprisonment in the first degree, as prohibited in §
36 5-11-103;

- 1 (7) *Permanent detention or restraint, as prohibited in § 5-11-*
2 *106;*
- 3 (8) *Robbery, as prohibited in § 5-12-102;*
- 4 (9) *Aggravated robbery, as prohibited in § 5-12-103;*
- 5 (10) *Battery in the first degree, as prohibited in § 5-13-201;*
- 6 (11) *Aggravated assault, as prohibited in § 5-13-204;*
- 7 (12) *Introduction of controlled substance into body of another*
8 *person, as prohibited in § 5-13-210;*
- 9 (13) *Terroristic threatening in the first degree, as prohibited*
10 *in § 5-13-301;*
- 11 (14) *Rape, as prohibited in § 5-14-103;*
- 12 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
- 13 (16) *Sexual assault in the first degree, second degree, third*
14 *degree, or fourth degree as prohibited in §§ 5-14-124 - 5-14-127;*
- 15 (17) *Incest, as prohibited in § 5-26-202;*
- 16 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
17 *5-26-306;*
- 18 (19) *Endangering the welfare of an incompetent person in the*
19 *first degree, as prohibited in § 5-27-201;*
- 20 (20) *Endangering the welfare of a minor in the first degree, as*
21 *prohibited in § 5-27-203;*
- 22 (21) *Permitting abuse of a child, as prohibited in § 5-27-*
23 *221(a)(1) and (3);*
- 24 (22) *Engaging children in sexually explicit conduct for use in*
25 *visual or print medium, transportation of minors for prohibited sexual*
26 *conduct, pandering or possessing visual or print medium depicting sexually*
27 *explicit conduct involving a child, or the use of a child or consent to the*
28 *use of a child in a sexual performance by producing, directing, or promoting*
29 *a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-*
30 *27-305, 5-27-402, and 5-27-403;*
- 31 (23) *Felony adult abuse, as prohibited in § 5-28-103;*
- 32 (24) *Theft of property, as prohibited in § 5-36-103;*
- 33 (25) *Theft by receiving, as prohibited in § 5-36-106;*
- 34 (26) *Arson, as prohibited in § 5-38-301;*
- 35 (27) *Burglary, as prohibited in § 5-39-201;*
- 36 (28) *Felony violation of the Uniform Controlled Substances Act,*

1 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

5 (31) 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;

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

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

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

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

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

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

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

25 (D) Rape, as prohibited in § 5-14-103;

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

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

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

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

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

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

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/s/ Verkamp

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