

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1411

5 By: Representatives Penzo, Della Rosa  
6 By: Senator E. Cheatham  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING CRIMINAL BACKGROUND  
10 CHECKS FOR NURSING LICENSURE TO REMOVE A CONFLICT IN  
11 THE LAW; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO AMEND THE LAW REGARDING CRIMINAL  
16 BACKGROUND CHECKS FOR NURSING LICENSURE  
17 TO REMOVE A CONFLICT IN THE LAW.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 17-87-312 is amended to read as follows:  
23 17-87-312. Criminal background checks.

24 (a)(1) Each first-time applicant for a license issued by the Arkansas  
25 State Board of Nursing shall apply to the Identification Bureau of the  
26 Department of Arkansas State Police for a state and national criminal  
27 background check, to be conducted by the Federal Bureau of Investigation.

28 (2) At the time a person applies to an Arkansas nursing  
29 educational program, the program shall notify the applicant in writing of the  
30 provisions and requirements of this section.

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

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

36 (d) Upon completion of the criminal background check, the



1 Identification Bureau of the Department of Arkansas State Police shall  
2 forward to the board all information obtained concerning the applicant in the  
3 commission of any offense listed in subsection (e) of this section.

4 (e) Except as provided in subdivision (1)(1) of this section, a person  
5 shall not be eligible to receive or hold a license issued by the board if  
6 that person has pleaded guilty or nolo contendere to or has been found guilty  
7 of any of the following offenses by a court in the State of Arkansas or of  
8 any similar offense by a court in another state or of any similar offense by  
9 a federal court:

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

1           (20) Endangering the welfare of a minor in the first degree as  
2 prohibited in § 5-27-205 and endangering the welfare of a minor in the second  
3 degree as prohibited in § 5-27-206;

4           (21) Permitting abuse of a minor as prohibited in § 5-27-221(a);

5           (22) Engaging children in sexually explicit conduct for use in  
6 visual or print media, transportation of minors for prohibited sexual  
7 conduct, pandering or possessing visual or print medium depicting sexually  
8 explicit conduct involving a child, or use of a child or consent to use of a  
9 child in a sexual performance by producing, directing, or promoting a sexual  
10 performance by a child as prohibited in §§ 5-27-303 – 5-27-305, 5-27-402, and  
11 5-27-403;

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

13           (24) Felony theft of property as prohibited in § 5-36-103;

14           (25) Felony theft by receiving as prohibited in § 5-36-106;

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

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

17           (28) Felony violation of the Uniform Controlled Substances Act,  
18 §§ 5-64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-  
19 419 – 5-64-442;

20           (29) Promotion of prostitution in the first degree as prohibited  
21 in § 5-70-104;

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

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

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

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

29           (f)(1)(A) The board may issue a nonrenewable temporary permit for  
30 licensure to a first-time applicant pending the results of the criminal  
31 background check.

32                       (B) The permit shall be valid for no more than six (6)  
33 months.

34           (2) Except as provided in subdivision (1)(1) of this section,  
35 upon receipt of information from the Identification Bureau of the Department  
36 of Arkansas State Police that the person holding the letter of provisional

1 licensure has pleaded guilty or nolo contendere to, or has been found guilty  
 2 of, any offense listed in subsection (e) of this section, the board shall  
 3 immediately revoke the provisional license.

4 (g)(1) The provisions of subsection (e) and subdivision (f)(2) of this  
 5 section may be waived by the board upon the request of:

- 6 (A) An affected applicant for licensure; or
- 7 (B) The person holding a license subject to revocation.

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

- 10 (A) The age at which the crime was committed;
- 11 (B) The circumstances surrounding the crime;
- 12 (C) The length of time since the crime;
- 13 (D) Subsequent work history;
- 14 (E) Employment references;
- 15 (F) Character references; and
- 16 (G) Other evidence demonstrating that the applicant does

17 not pose a threat to the health or safety of the public.

18 (h)(1) Any information received by the board from the Identification  
 19 Bureau of the Department of Arkansas State Police pursuant to this section  
 20 shall not be available for examination except by:

- 21 (A) The affected applicant for licensure or his or her  
 22 authorized representative; or
- 23 (B) The person whose license is subject to revocation or  
 24 his or her authorized representative.

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

27 (i) Any information made available to the affected applicant for  
 28 licensure or the person whose license is subject to revocation shall be  
 29 information pertaining to that person only.

30 (j) Rights of privilege and confidentiality established in this  
 31 section shall not extend to any document created for purposes other than this  
 32 background check.

33 (k) The board shall adopt the necessary rules and regulations to fully  
 34 implement the provisions of this section.

35 (l)(1) For purposes of this section, an expunged record of a  
 36 conviction or a plea of guilty or nolo contendere to an offense listed in

1 subsection (e) of this section shall not be considered a conviction, guilty  
 2 plea, or nolo contendere plea to the offense unless the offense is also  
 3 listed in subdivision (1)(2) of this section.

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

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

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

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

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

12 (E) Sexual assault in the first degree as prohibited in §  
 13 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

14 (F) Endangering the welfare of a minor in the first degree  
 15 as prohibited in § 5-27-205 ~~and endangering the welfare of a minor in the~~  
 16 ~~second degree as prohibited in § 5-27-206;~~

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

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

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

21 (J) Adult abuse that constitutes a felony as prohibited in  
 22 § 5-28-103.

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 25 **APPROVED: 03/15/2017**  
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