

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

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1901

4  
5 By: Representative Elliott  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO UPDATE SEX OFFENSES CONCERNING  
10 BACKGROUND CHECKS ON PERSONS CARING FOR THE  
11 ELDERLY; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO UPDATE SEX OFFENSES CONCERNING  
15 BACKGROUND CHECKS ON PERSONS CARING FOR  
16 THE ELDERLY.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 20-33-205, concerning background checks on  
22 persons caring for the elderly, 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 (c) of this section:

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

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

34 (3)(A) A qualified entity shall not knowingly employ a person  
35 who has pleaded guilty or nolo contendere to or has been found guilty of any  
36 of the offenses listed in subsection (b) of this section by any court in the



1 State of Arkansas or of any similar offense by a court in another state or of  
2 any similar offense by a federal court.

3 (B) Except as provided in subsection (c) of this section:

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

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

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

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

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

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

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

23 (6) False imprisonment in the first degree, as prohibited in §  
24 5-11-103;

25 (7) Permanent detention or restraint, as prohibited in § 5-11-  
26 106;

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

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

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

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

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

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

35 (14) Rape ~~and carnal abuse in the first degree, second degree,~~  
36 ~~and third degree,~~ as prohibited in §§ 5-14-103 ~~— 5-14-106;~~

1           ~~(15) Sexual abuse in the first degree and second degree, as~~  
 2 ~~prohibited in §§ 5-14-108 and 5-14-109;~~

3           ~~(16)~~(15) Sexual indecency with a child, as prohibited in § 5-14-  
 4 110;

5           ~~(17) Violation of a minor in the first degree and second degree,~~  
 6 ~~as prohibited in §§ 5-14-120 and 5-14-121;~~

7           (16) Sexual assault in the first degree, second degree, third  
 8 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-24-127;

9           ~~(18)~~(17) Incest, as prohibited in § 5-26-202;

10          ~~(19)~~(18) Offenses against the family, as prohibited in §§ 5-26-  
 11 303 - 5-26-306;

12          ~~(20)~~(19) Endangering the welfare of incompetent person in the  
 13 first degree, as prohibited in § 5-27-201;

14          ~~(21)~~(20) Endangering the welfare of a minor in the first degree,  
 15 as prohibited in § 5-27-203;

16          ~~(22)~~(21) Permitting child abuse, as prohibited in § 5-27-  
 17 221(a)(1) and (a)(3);

18          ~~(23)~~(22) Engaging children in sexually explicit conduct for use  
 19 in visual or print media, transportation of minors for prohibited sexual  
 20 conduct, pandering or possessing visual or print medium depicting sexually  
 21 explicit conduct involving a child, or use of a child or consent to use of a  
 22 child in a sexual performance by producing, directing, or promoting a sexual  
 23 performance by a child, as prohibited in § 5-27-303, § 5-27-304, § 5-27-305,  
 24 § 5-27-402, and § 5-27-403;

25          ~~(24)~~(23) Felony adult abuse, as prohibited by § 5-28-103;

26          ~~(25)~~(24) Theft of property, as prohibited in § 5-36-103;

27          ~~(26)~~(25) Theft by receiving, as prohibited in § 5-36-106;

28          ~~(27)~~(26) Arson, as prohibited in § 5-38-301;

29          ~~(28)~~(27) Burglary, as prohibited in § 5-39-201;

30          ~~(29)~~(28) Felony violation of the Uniform Controlled Substances  
 31 Act, as prohibited in § 5-64-401;

32          ~~(30)~~(29) Promotion of prostitution in the first degree, as  
 33 prohibited in § 5-70-104;

34          ~~(31)~~(30) Stalking, as prohibited in § 5-71-229;

35          ~~(32)~~(31) Criminal attempt, criminal complicity, criminal  
 36 solicitation, or criminal conspiracy, as prohibited in § 5-3-201, § 5-3-202,

1 § 5-3-301, and § 5-3-401, to commit any of the offenses listed in this  
 2 subsection;

- 3 ~~(33)~~(32) Forgery, as prohibited in § 5-37-201;
- 4 ~~(34)~~(33) Breaking or entering, as prohibited in § 5-39-202; and
- 5 ~~(35)~~(34) Obtaining a controlled substance by fraud, as  
 6 prohibited in § 5-64-403.

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 offense listed in subsection (b) of this section  
 17 shall not disqualify an applicant for employment if the date of conviction of  
 18 the offense is at least ten (10) years from the date of the application and  
 19 the individual has no criminal convictions of any type or nature during the  
 20 ten-year period. To the extent that there is any conflict with § 17-1-103,  
 21 this section shall be deemed to supersede § 17-1-103.

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

- 25 (i) Capital murder, as prohibited in § 5-10-101;
- 26 (ii) Murder in the first degree and second degree,  
 27 as prohibited in §§ 5-10-102 and 5-10-103;
- 28 (iii) Kidnapping, as prohibited in § 5-11-102;
- 29 (iv) Rape ~~and carnal abuse in the first degree,~~  
 30 ~~second degree, and third degree,~~ as prohibited in §§ 5-14-103 ~~—5-14-106;~~
- 31 ~~(v) Sexual abuse in the first and second degree, as~~  
 32 ~~prohibited in §§ 5-14-108 and 5-14-109;~~
- 33 (v) Sexual assault in the first degree and second  
 34 degree, as prohibited in §§ 5-14-124 - 5-14-125;
- 35 (vi) Endangering the welfare of an incompetent  
 36 person in the first degree, as prohibited in § 5-27-201;

1 (vii) Felony adult abuse, as prohibited by § 5-28-  
2 103; and

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

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

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

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

19 (g) Any unlicensed qualified entity violating this subchapter shall be  
20 guilty of a Class A misdemeanor for each violation.

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