

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

Call Item 17

A Bill

HOUSE BILL 1053

4
5 By: Representative Mahony
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For An Act To Be Entitled

9 AN ACT TO FUND A PORTION OF THE STATE BUDGET BY
10 PROVIDING FOR A FEE TO BE CHARGED BY THE ARKANSAS
11 CRIME INFORMATION CENTER AND THE DEPARTMENT OF
12 THE ARKANSAS STATE POLICE TO RELEASE CERTAIN
13 CRIMINAL HISTORY INFORMATION; AND FOR OTHER
14 PURPOSES.

Subtitle

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17 TO FUND A PORTION OF THE STATE BUDGET BY
18 PROVIDING FOR A FEE TO BE CHARGED BY THE
19 ARKANSAS CRIME INFORMATION CENTER AND
20 THE DEPARTMENT OF THE ARKANSAS STATE
21 POLICE TO RELEASE CERTAIN CRIMINAL
22 HISTORY INFORMATION.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Title.

28 This act shall be known as the "Arkansas State Criminal Records Act".
29

30 SECTION 2. Intent.

31 (a) It is the intent of this act to provide one (1) source for
32 obtaining the most accurate and complete criminal history information.

33 (b) The Department of the Arkansas State Police shall be the agency
34 responsible for the dissemination of criminal history information under this
35 act.

36 (c) The Arkansas Crime Information Center shall be authorized to

1 disseminate criminal history information as authorized by law.

2 (d)(1) It is the intent of this act to allow dissemination of criminal
3 history information to employers and professional licensing boards pertaining
4 to all felony arrest information and all conviction information.

5 (2) Felony arrest information that has had a disposition of
6 acquittal, dismissal, or nolle prosequi entered into the central repository
7 will not be released under this act.

8
9 SECTION 3. Definitions.

10 For purposes of this act:

11 (1) "Administration of criminal justice" means performing functions of
12 investigation, apprehension, detention, prosecution, adjudication,
13 correctional supervision, or rehabilitation of accused persons or criminal
14 offenders; including criminal identification activities and the collection,
15 maintenance, and dissemination of criminal justice information;

16 (2)(A) "Arrest records or arrest information" means felony arrest
17 information where conviction or disposition information has not been entered
18 into the central repository.

19 (B) This term does not include misdemeanor arrest
20 information or felony arrest information that has a disposition of acquittal,
21 dismissal, or nolle prosequi entered into the central repository;

22 (3) "Central repository" means the Arkansas Crime Information Center,
23 which collects, maintains, and disseminates criminal history information;

24 (4)(A) "Conviction information" means criminal history information
25 disclosing that a person has plead guilty or nolo contendere to, or was found
26 guilty of a criminal offense in a court of law, together with sentencing
27 information.

28 (B) Sealed or expunged records are not included in the
29 definition of "conviction information";

30 (5)(A) "Criminal history information" means:

31 (i) A record compiled by the central repository or the
32 Identification Bureau of the Department of Arkansas State Police on an
33 individual consisting of names, identification data, notations of arrests,
34 detentions, indictments, informations, or other formal criminal charges
35 obtained from criminal justice agencies, including any dispositions of the
36 charges, as well as notations on correctional supervision and release;

1 (ii) Fingerprint records on individuals not involved in
2 the criminal justice system, juvenile records, or driver history records are
3 not included in the definition of "criminal history information"; and

4 (iii) Original records of entry maintained by criminal
5 justice agencies, court indices, records of public judicial proceedings,
6 court decisions, opinions, and information disclosed during public judicial
7 proceedings are not included in the definition of criminal history
8 information.

9 (B) When the release is made by the specific court, law
10 enforcement agency, or prosecutor that created the records, the records are
11 not included in the definition of "criminal history information";

12 (C) This subdivision (5) does not prohibit the release of
13 information by the specific agency that created the record;

14 (6) "Criminal justice agency" means a government agency or any subunit
15 thereof which is authorized by law to perform the administration of criminal
16 justice and which allocates more than one-half (1/2) its annual budget to the
17 administration of criminal justice;

18 (7)(A) "Disposition" means information describing the outcome of any
19 criminal charges, including notations that law enforcement officials have
20 elected not to refer the matter to a prosecutor, that a prosecutor has
21 elected not to begin criminal proceedings, or that proceedings have been
22 indefinitely postponed.

23 (B) "Dispositions" includes acquittals, dismissals, probations,
24 charges pending due to mental disease or defect, guilty pleas, nolle
25 prosequi, nolo contendere pleas, findings of guilt, youthful offender
26 determinations, first offender programs, pardons, commuted sentences,
27 mistrials in which the defendant is discharged, executive clemencies,
28 paroles, releases from correctional supervision, deaths, or a finding that
29 the person must register as a sex offender;

30 (8) "Dissemination" means disclosing criminal history information or
31 disclosing the absence of criminal history information to any agency,
32 professional licensing board, business designated by state or federal law, or
33 any other employer legally doing business in and paying taxes to the State of
34 Arkansas who has applied and been approved by the Department of Arkansas
35 State Police to receive the information, subject to the following exceptions:

36 (A) When criminal justice agencies jointly participate in the

1 maintenance of a single recordkeeping system as an alternative to maintaining
2 separate records, the furnishing of information by that department to
3 personnel of a participating agency is not a dissemination; and

4 (B) The furnishing of information by any criminal justice agency
5 to another for the purpose of the administration of criminal justice;

6 (9) "Identification Bureau" means the Identification Bureau of the
7 Department of the Arkansas State Police, which may maintain fingerprint card
8 files and other identification information on individuals;

9 (10) "Pending information" means felony criminal history information
10 in some stage of active prosecution or processing;

11 (11) "Requestor" means the employer or professional licensing board
12 that has submitted an inquiry into a subject's criminal history information
13 under this act; and

14 (12) "Seal" or "Expunge" means that the record or records in question
15 shall be sealed, sequestered, and treated as confidential as provided by law,
16 including pardons issued by the Governor.

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18 SECTION 4. Information required - Exceptions.

19 (a) The Department of Arkansas State Police and the Arkansas Crime
20 Information Center shall disseminate criminal history information pertaining
21 to any felony arrest, detention, indictment, information, or other formal
22 felony criminal charge to the extent entries have been made at the time of
23 the request for the information.

24 (b) Any event, activity, or any portion of the criminal history
25 information which has not been processed by the Department of the Arkansas
26 State Police or the Arkansas Crime Information Center shall not be required
27 to be included in the dissemination.

28 (c) Requests for information, supporting documents, and any responses
29 are not subject to disclosure under the Arkansas Freedom of Information Act,
30 § 25-19-101 et seq.

31 (d) This act shall not effect any record or information that may be
32 accessed by the public under the Freedom of Information Act of 1967, §§ 25-
33 19-101 et seq.

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35 SECTION 5. Disposition data to the central repository.

36 (a) Criminal history information shall be submitted to the central

1 repository as required under § 12-12-1007.

2 (b) The central repository shall enter these disposition records in an
 3 expeditious manner.

4 (c) Criminal history information provided to the central repository
 5 or, the Department of the Arkansas State Police shall not be subject to
 6 disclosure under the Arkansas Freedom of Information Act, § 25-19-101 et seq.

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 8 SECTION 6. Unrestricted information - Records.

9 (a) All conviction information and felony arrest records may be
 10 disseminated as provided for in this act.

11 (b) Any criminal history information of felony arrest records and all
 12 conviction information which pertains to a person currently being processed
 13 by the criminal justice system, including the entire period of correctional
 14 supervision extending through final discharge from parole, may be
 15 disseminated without restriction.

16 (c)(1) The Identification Bureau of the Department of Arkansas State
 17 Police, the Arkansas Crime Information Center, or a third party shall be
 18 responsible for the maintenance of information pertaining to dissemination of
 19 criminal history information.

20 (2) The information pertaining to dissemination required to be
 21 maintained shall be retained for a period of not less than three (3) years,
 22 for security purposes.

23 (d)(1)(A) Each employer or professional licensing board that is
 24 allowed access to criminal history information under this act, shall maintain
 25 in its files the written consent to obtain the criminal history information
 26 given by the applicant or employee.

27 (B) Any employer or professional licensing board who is
 28 granted access to criminal history information under this act shall not
 29 disseminate the criminal history information.

30 (2) Those files and consent forms shall be subject to inspection
 31 by the Department of the Arkansas State Police.

32 (e) This section allows the dissemination of information concerning
 33 persons who are required to register as sex offenders.

34 (f) Criminal justice agencies, its employees, and officials shall be
 35 immune from civil liability, except in instances of gross negligence or
 36 intentional malice, for dissemination of criminal history information under

1 this act.

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3 SECTION 7. Administration.

4 (a)(1) Release of criminal history information under this act shall
5 only be made by the Identification Bureau of the Department of the Arkansas
6 State Police and the Arkansas Crime Information Center as authorized by law.

7 (2) The Department of Arkansas State Police and the Arkansas
8 Crime Information Center shall adopt rules and regulations consistent with
9 the provisions and intent of this act.

10 (b) The Department of Arkansas State Police and the Arkansas Crime
11 Information Center are authorized to contract with Information Network of
12 Arkansas under §§ 25-27-101 through 25-27-105 or any other qualified third-
13 party vendor in the establishment of the gateway or means of processing these
14 transactions electronically.

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16 SECTION 8. Access.

17 (a) Criminal history information or requestor information collected
18 and maintained under this act is not considered public record information for
19 dissemination within the intent and meaning of the Arkansas Freedom of
20 Information Act, § 25-19-101 et seq.

21 (b) A fee for providing criminal history information will be charged
22 for each criminal history information requested.

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24 SECTION 9. Right of review and challenge.

25 (a)(1) A person may review and challenge their criminal history
26 information under § 12-12-1013.

27 (2) No fee shall be charged for review or challenge of criminal
28 history information.

29 (b)(1) A person may go to any law enforcement agency, provide positive
30 verification of his or her identity, be fingerprinted by the law enforcement
31 agency, and supply written details of the errors in the criminal history
32 information.

33 (2) The local law enforcement agency must send the fingerprint
34 card and information directly to the Identification Bureau of the Department
35 of the Arkansas State Police.

36 (3) The law enforcement agency shall verify that the

1 identification of the person and the fingerprint card information are
 2 correct.

3 (4) There is no charge from the Department of Arkansas State
 4 Police or the Arkansas Crime Information Center for this review process.

5 (c)(1) A person, after positive identification verification, may
 6 review his or her requestor information maintained through the Department of
 7 Arkansas State Police or its designee.

8 (2) No fee shall be charged for this access.

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 10 SECTION 10. Fees.

11 (a)(1) A fee may be charged for providing criminal history information
 12 under this act.

13 (2) The amount of the fee will be determined jointly by the
 14 Department of Arkansas State Police and the Arkansas Crime Information Center
 15 and shall not exceed twenty dollars (\$20.00), exclusive of any third party
 16 electronic processing fee charges.

17 (3)(A) The fees shall be credited fifty percent (50%) to the
 18 Crime Information System Fund and fifty percent (50%) to the State Police
 19 Equipment Fund.

20 (B) The Arkansas Crime Information Center may utilize
 21 these funds for the operation or expansion of the automated criminal justice
 22 information system, subject to legislative appropriations.

23 (C) The Department of Arkansas State Police may utilize
 24 these funds for the operation, expansion, and integration of the Automated
 25 Fingerprint Identification System, which includes components and software to
 26 support a total integrated solution associated with the Automated Fingerprint
 27 Identification System.

28 (4) Special revenues deposited in the Crime Information System
 29 Fund and the State Police Equipment Fund may be used for personal services
 30 and operating expenses as provided by law, and any special revenues unused at
 31 the end of any fiscal year shall be carried forward.

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 33 SECTION 11. Penalty

34 (a) Any person who shall knowingly release or disclose to any
 35 unauthorized person any information collected and maintained under this act,
 36 and any person who knowingly obtains the information for purposes not

1 authorized by this act, shall be deemed guilty of a Class A misdemeanor.

2 (b) The Department of Arkansas State Police and the Arkansas Crime
3 Information Center shall have the power to promulgate rules and regulations
4 as are necessary to implement, enforce, and administer this act.

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6 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
7 General Assembly of the State of Arkansas that the dissemination of complete,
8 accurate, and timely criminal history information is necessary for the
9 protection of the people of the State of Arkansas and this act is needed to
10 provide that necessary access to the criminal history information.
11 Therefore, an emergency is declared to exist and this act being immediately
12 necessary for the preservation of the public peace, health, and safety shall
13 become effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,
16 the expiration of the period of time during which the Governor may veto the
17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is
19 overridden, the date the last house overrides the veto.

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