

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: S3/21/97

# A Bill

ACT 1198 OF 1997  
HOUSE BILL 1929

5 By: Representative Ingram  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE  
10 ANNOTATED § 20-78-601 ET SEQ. RELATIVE TO BACKGROUND CHECKS  
11 FOR CHILD CARE FACILITY OWNERS, OPERATORS, AND EMPLOYEES;  
12 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."  
13

## Subtitle

14 "TO AMEND VARIOUS SECTIONS OF A.C.A.  
15 § 20-78-601 ET SEQ. RELATIVE TO  
16 BACKGROUND CHECKS FOR CHILD CARE  
17 FACILITY OWNERS, OPERATORS, AND  
18 EMPLOYEES."  
19

20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Arkansas Code Annotated § 20-78-601 is amended to read as  
24 follows:

25 "20-78-601. Child Abuse Central Registry check - Owners, operators, and  
26 prospective employees in licensed or church-operated exempt facilities.

27 (a)(1) All applicants for a church-operated exemption or a license to  
28 own or operate a child care facility shall be checked with the Arkansas Child  
29 Abuse Central Registry for reports of child maltreatment upon application for  
30 the license or church-operated exemption and ~~during every child care facility~~  
31 ~~license renewal~~ every two (2) years thereafter.

32 (2) All employees or conditional employees in licensed child  
33 care facilities or facilities operating with a church-operated exemption shall  
34 be checked with the Arkansas Child Abuse Central Registry for reports of child  
35 maltreatment prior to hire and every two (2) years thereafter. ~~All employees~~  
36 ~~in a child care facility shall further be checked with the registry for~~

1 ~~reports of child maltreatment during every child care facility license~~  
2 ~~renewal.~~

3 (b) The Child Care Facility Review Board shall have the authority to  
4 deny a license or church-operated exemption to any applicant found to have any  
5 record of founded child maltreatment in the official record of the Arkansas  
6 Child Abuse Central Registry.

7 (c) Any person employed in a licensed child care facility found to have  
8 any record of child maltreatment in the official record of the Arkansas Child  
9 Abuse Central Registry shall be reviewed by the owner or operator of the  
10 facility in consultation with the board to determine appropriate corrective  
11 action measures, which would include but are not limited to training,  
12 probationary employment, or nonselection for employment. The Child Care  
13 Facility Review Board shall also have the authority to deny a license or  
14 church-operated exemption to an applicant who continues to employ a person  
15 with any record of founded child maltreatment."  
16

17 SECTION 2. Arkansas Code Annotated § 20-78-602 is amended to read as  
18 follows:

19 "20-78-602. Criminal records check.

20 (a) Criminal Records Check - Owners and Operators.

21 (1) Each applicant for a license to own or operate a child care  
22 facility shall be required to apply to the Identification Bureau of the  
23 Department of Arkansas State Police for a statewide criminal records check and  
24 a nationwide criminal records check, the latter to be conducted by the Federal  
25 Bureau of Investigation. The nationwide criminal records check shall conform  
26 to the applicable federal standards and shall include the taking of  
27 fingerprints. Such applicant shall sign a release of information and shall be  
28 responsible for the payment of any fee associated with the nationwide criminal  
29 records check. The applicant shall not be assessed a fee for the statewide  
30 criminal records check.

31 (2) In the event a legible set of fingerprints, as determined by  
32 the Identification Bureau of the Arkansas State Police and the Federal Bureau  
33 of Investigation, cannot be obtained after a minimum of three (3) attempts,  
34 the Child Care Facilities Review Board shall determine eligibility based upon  
35 a name check by the Identification Bureau of the Arkansas State Police and the  
36 Federal Bureau of Investigation.

1 ~~\_\_\_\_\_~~ ~~(2)~~(3) Upon completion of the criminal records checks, the  
2 Identification Bureau of the Department of Arkansas State Police shall forward  
3 all information obtained concerning the applicant for a license to the Child  
4 Care Facility Review Board.

5 (b) Criminal Records Check - Employees.

6 (1)(A) Any employee or conditional employee, if that employment  
7 involves supervisory or disciplinary power over a child or children, or  
8 involves contact with a child or children, in any child care facility which is  
9 required to be licensed by the board, who has not been a resident of the state  
10 of Arkansas for the preceding six (6) years, shall apply to the Identification  
11 Bureau of the Department of Arkansas State Police for a statewide criminal  
12 records check, and a nationwide criminal records check to be conducted through  
13 the Federal Bureau of Investigation. The nationwide criminal records check  
14 shall conform to the applicable federal standards and shall include the taking  
15 of fingerprints. Upon applying for a criminal records check, such person shall  
16 sign a release of information and shall be responsible for the payment of any  
17 fee associated with the nationwide criminal records check. The applicant shall  
18 not be assessed a fee for the statewide criminal records check.

19 (B) In the event a legible set of fingerprints, as  
20 determined by the Identification Bureau of the Department of Arkansas State  
21 Police and the Federal Bureau of Investigation, cannot be obtained after a  
22 minimum of three (3) attempts, the Child Care Facilities Review Board will  
23 determine eligibility for employment based upon a name check by the  
24 Identification Bureau of the Department of Arkansas State Police and the  
25 Federal Bureau of Investigation.

26 ~~\_\_\_\_\_~~ ~~(B)~~(C) Any employee, if that employment involves  
27 supervisory or disciplinary power over a child or children, or involves  
28 contact with a child or children, in any child care facility which is required  
29 to be licensed by the board, who has been a resident of the State of Arkansas  
30 for the preceding six (6) years, shall only be required to apply to the  
31 Identification Bureau of the Department of Arkansas State Police for a  
32 statewide criminal records check. The applicant shall not be assessed a fee  
33 for the statewide criminal records check.

34 (2) Upon completion of a criminal records check, the  
35 Identification Bureau of the Department of Arkansas State Police shall forward  
36 all information obtained concerning the employee or conditional employee in a

1 child care facility to the Child Care Facility Review Board.

2 (3) The owner or operator of a child care facility shall maintain  
3 on file, subject to inspection by the board, evidence that criminal records  
4 checks have been initiated on all current employees hired on or after  
5 September 1, 1993, and the results of the checks. Failure to maintain that  
6 evidence on file will be prima facie grounds to revoke the license of the  
7 owner or operator of the child care facility.

8 (c) Procedures Generally.

9 (1) Each applicant for a license to own or operate a child care  
10 facility, and each employee in any child care facility required to be licensed  
11 by the board, shall complete a criminal records check form developed by the  
12 Department of Human Services and shall sign such form under oath before a  
13 notary public.

14 (2) The owner or operator of the child care facility shall submit  
15 the criminal records check form to the department for processing within ten  
16 (10) days of hiring the employee, who shall remain under conditional  
17 employment until the Arkansas Child Abuse Central Registry check and criminal  
18 records checks required under this subchapter are completed.

19 (3) Nothing in this section shall be construed to prevent the  
20 board from denying a license to an owner or preventing an operator or employee  
21 in a child care facility from having unsupervised access to children by reason  
22 of the pending status of a criminal prosecution or pending appeal of a child  
23 maltreatment determination.

24 (d)(1) An owner or operator of a child care facility shall not be  
25 liable during a conditional period of employment for hiring an employee who  
26 may be subject to a charge of false swearing upon completion of central  
27 registry and criminal records checks.

28 (2)(A) Pursuant to this subchapter, false swearing shall occur  
29 when a person, while under oath, provides false information or omits  
30 information that the person knew or should reasonably have known was material.

31 (B) Lack of knowledge that information is material is not a  
32 defense to a charge of false swearing.

33 (3) For purposes of this subchapter, false swearing is a Class A  
34 misdemeanor.

35 (e) Repeat Checks.

36 (1) After the initial checks, licensed owners or operators of

1 child care facilities and all child care facility employees shall reapply  
2 every five (5) years to the Identification Bureau of the Department of  
3 Arkansas State Police for a statewide criminal records check, which, upon  
4 completion, shall be forwarded to the Child Care Facility Review Board.

5 (2) The applicants shall not be assessed a fee for the statewide  
6 criminal records check required under this subsection.

7 (f) All applicants for a church-operated exemption and their employees  
8 shall comply with this section, in addition to applicants for a license to own  
9 or operate a child care facility and their employees."

10

11 SECTION 3. Arkansas Code Annotated § 20-78-604 is amended to read as  
12 follows:

13 "20-78-604. Qualifications for child care ownership, operation, or  
14 employment.

15 (a) Without proof of rehabilitation, as provided in subsection (b) of  
16 this section, no person shall be eligible to be a child care facility owner,  
17 operator, or employee in a licensed or church-operated exempt facility if that  
18 person has pleaded guilty or nolo contendere or has been found guilty of any  
19 of the following offenses by any court in the State of Arkansas or of any  
20 similar offense by a court in another state or of any similar offense by a  
21 federal court:

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

23 (2) Murder in the first and second degrees as prohibited in  
24 §§ 5-10-102 and 5-10-103;

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

26 (4) Battery in the first and second degrees as prohibited in  
27 §§ 5-13-201 and 5-13-202;

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

29 (6) Terroristic threatening in the first degree as prohibited in  
30 § 5-13-301;

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

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

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

35 (10) Rape and carnal abuse in the first and second degrees as  
36 prohibited in §§ 5-14-103 - 5-14-105;

1 (11) Sexual abuse in the first and second degrees as prohibited  
2 in §§ 5-14-108 and 5-14-109;

3 (12) Violation of a minor in the first and second degrees as  
4 prohibited in §§ 5-14-120 and 5-14-121;

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

6 (14) Endangering the welfare of a minor in the first degree as  
7 prohibited in § 5-27-203;

8 (15) Permitting child abuse as prohibited in subdivisions (a)(1)  
9 and (a)(3) of § 5-27-221;

10 (16) Engaging children in sexually explicit conduct for use in  
11 visual or print media, transportation of minors for prohibited sexual conduct,  
12 or use of a child or consent to use of a child in a sexual performance by  
13 producing, directing, or promoting a sexual performance by a child as  
14 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

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

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

19 (19) Manufacture, delivery, or possession with intent to  
20 manufacture or deliver any controlled substance as prohibited in § 5-64-401;  
21 ~~and~~

22 ~~(20) Any felony or any misdemeanor involving violence or moral~~  
23 ~~turpitude.~~ Carnal abuse in the third degree as prohibited in § 5-14-106;

24 (21) Sexual solicitation of a child as prohibited in § 5-14-110;

25 (22) Pandering or possessing visual or print medium depicting  
26 sexually explicit conduct involving a child as prohibited by § 5-27-304;

27 (23) Negligent homicide as prohibited by § 5-10-105;

28 (24) Assault in the first degree as prohibited by § 5-13-205;

29 (25) Coercion as prohibited by § 5-13-208;

30 (26) Sexual misconduct as prohibited by § 5-14-107;

31 (27) Public sexual indecency as prohibited by § 5-14-111;

32 (28) Indecent exposure as prohibited by § 5-14-112;

33 (29) Endangering the welfare of a minor in the second degree as  
34 prohibited by § 5-27-204; and

35 (30) Any felony or any misdemeanor involving violence or sexual  
36 misconduct.

1           (b)(1) Any person pleading guilty or nolo contendere or found guilty of  
 2 any of the offenses listed in subsection (a) of this section ~~who can~~  
 3 ~~demonstrate rehabilitation, where more than five (5) years have passed since~~  
 4 ~~the person was released from confinement, probation, or parole, may appear~~  
 5 ~~before the Child Care Facility Review Board to present his case that he is~~  
 6 ~~qualified to be a child care facility owner, operator, or employee. The board~~  
 7 ~~is authorized to determine when a petitioner has been rehabilitated~~  
 8 ~~sufficiently to be a child care facility owner, operator, or employee shall be~~  
 9 absolutely disqualified to be an owner, operator, or employee in a child care  
 10 facility, licensed or church-operated exempt, during the period of their  
 11 confinement, probation, or parole.

12           (2) Any person pleading guilty or nolo contendere or found guilty  
 13 of any of the offenses listed in subsection (a) of this section shall be  
 14 presumed to be disqualified to be an owner, operator, or employee in a child  
 15 care facility, licensed or church-operated exempt, after the completion of  
 16 their term of confinement, probation, or parole.

17           (A) The applicant to own, operate, or be an employee in a  
 18 licensed or church-operated exempt facility must petition the Child Care  
 19 Facility Review Board to make a determination that five (5) years have passed  
 20 since the date of conviction, plea of guilty or nolo contendere and that the  
 21 applicant does not pose a risk of harm to any person served by the facility.  
 22 The applicant shall bear the burden of making such showing.

23           (B) The board, in its discretion, may permit the applicant  
 24 to own, operate, or be an employee in a child care facility, licensed or  
 25 church-operated exempt, upon making a determination that five (5) years have  
 26 passed since the date of conviction, plea of guilty or nolo contendere and  
 27 that the applicant does not pose a risk of harm to any person served by the  
 28 facility."

29

30           SECTION 4. Arkansas Code Annotated § 20-78-605 is amended to read as  
 31 follows:

32           "20-78-605. Definitions - Volunteers records check.

33           ~~(a)~~ As used in this subchapter, unless the context otherwise requires:

34           (1) Employee means a person in the service of a child care facility,  
 35 other than a person providing auxiliary services under a professional license,  
 36 whether full-time or part-time and whether employed by contract or at-will, in

1 which the employer has authority to control the person in the material details  
2 of how work will be performed and when compensation will be provided; and

3 (A) Compensation will be provided; or

4 (B) The person is a volunteer who has supervisory or disciplinary  
5 control over children or who is left alone with children.

6 (2) Volunteer means a person who provides his services without any  
7 express or implied promise of compensation.

8 ~~\_\_\_\_\_ (b)(1)(A)~~ Volunteers who are not left alone with children or who  
9 do not have disciplinary control over children in child care facilities shall  
10 not be required to have criminal records checks.

11 ~~\_\_\_\_\_ (2)(B)~~ All volunteers shall be checked with the Arkansas Child  
12 Abuse Central Registry for reports of child maltreatment.

13 (3) Owner means any person who assumes the legal responsibility for  
14 operation of a child care facility by signing the application for a license or  
15 for an exemption.

16 (4) Operator means any person who is responsible for managing  
17 day-to-day operation of a child care facility."

18

19 SECTION 5. All provisions of this act of a general and permanent nature  
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
21 Revision Commission shall incorporate the same in the Code.

22

23 SECTION 6. If any provision of this act or the application thereof to  
24 any person or circumstance is held invalid, such invalidity shall not affect  
25 other provisions or applications of the act which can be given effect without  
26 the invalid provision or application, and to this end the provisions of this  
27 act are declared to be severable.

28

29 SECTION 7. All laws and parts of laws in conflict with this act are  
30 hereby repealed.

31

32 SECTION 8. EMERGENCY. It is found and determined by the General  
33 Assembly of the State of Arkansas that the immediate effectiveness of this Act  
34 is essential to the safety and well-being of Arkansas children who are cared  
35 for in child care facilities. Therefore an emergency is declared to exist and  
36 this act being immediately necessary for the preservation of the public peace,

1 health and safety shall become effective on the date of its approval by the  
2 Governor. If the bill is neither approved nor vetoed by the Governor, it  
3 shall become effective on the expiration of the period of time during which  
4 the Governor may veto the bill. If the bill is vetoed by the Governor and the  
5 veto is overridden, it shall become effective on the date the last house  
6 overrides the veto.

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/s/Ingram

APPROVED: 4-08-97