

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4 By: Representative Ingram

As Engrossed: H1/24/97 S2/25/97 S3/6/97 S4/2/97

# A Bill

ACT 1314 OF 1997  
HOUSE BILL 1019

## For An Act To Be Entitled

"AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS AS A  
CONDITION FOR EMPLOYMENT IN NONCERTIFIED STAFF POSITIONS  
BY LOCAL SCHOOL DISTRICTS OR EDUCATION SERVICE  
COOPERATIVES; TO DECLARE AN EMERGENCY; AND FOR OTHER  
PURPOSES."

## Subtitle

"TO REQUIRE CRIMINAL BACKGROUND CHECKS  
AS A CONDITION FOR EMPLOYMENT IN  
NONCERTIFIED STAFF POSITIONS BY LOCAL  
SCHOOL DISTRICTS OR EDUCATION SERVICE  
COOPERATIVES."

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

SECTION 1. (a)(1)(A)(i) On and after the effective date of this Act,  
the board of directors of a local school district or an education service  
cooperative shall require, as a condition for initial employment in a  
noncertified staff position, any person making such application to apply to  
the Identification Bureau of the Department of Arkansas State Police for a  
state and nationwide criminal records check, the latter to be conducted by the  
Federal Bureau of Investigation.

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

(B) Such person shall sign a release of information to the  
Department of Education. Unless the employing school district board of  
directors has taken action to pay for the cost of criminal background checks  
required by this section, the employment applicant shall be responsible to the  
Department of Arkansas State Police for the payment of any fee associated with

1 the criminal records check.

2           (2) Upon completion of the criminal records check, the  
3 Identification Bureau of the Department of Arkansas State Police shall forward  
4 all information obtained concerning the person in the commission of any  
5 offense listed in subsection (b) of this section to the *Department of*  
6 *Education, which shall promptly inform the board of directors of the local*  
7 *school district or education service cooperative whether or not the applicant*  
8 *is eligible for employment as provided by subsection (b)(1) of this act.*

9           (3) At the conclusion of any background check required by this  
10 section, the Identification Bureau of the Department of Arkansas State Police  
11 shall promptly destroy the fingerprint card of the applicant.

12           (b)(1) No person shall be eligible for employment by a local school  
13 district or education service cooperative in a noncertified staff position if  
14 that person has pleaded guilty or nolo contendere to, or been found guilty of  
15 any of the following offenses by any court in the state of Arkansas or of any  
16 similar offense by a court in another state or of any similar offense by a  
17 federal court:

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

19           (2) Murder in the first and second degrees as prohibited in §§ 5-  
20 10-102 and 5-10-103;

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

22           (4) Battery in the first and second degrees as prohibited in §§  
23 5-13-201 and 5-13-202;

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

25           (6) Terroristic threatening in the first degree as prohibited in  
26 § 5-13-301;

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

28           (8) Rape and carnal abuse in the first and second degrees as  
29 prohibited in §§ 5-14-103 - 5-14-105;

30           (9) Sexual abuse in the first and second degrees as prohibited in  
31 §§ 5-14-108 and 5-14-109;

32           (10) Violation of a minor in the first and second degrees as  
33 prohibited in §§ 5-14-120 and 5-14-121;

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

35           (12) Engaging children in sexually explicit conduct for use in  
36 visual or print media, transportation of minors for prohibited sexual conduct,

1 or use of a child or consent to use of a child in a sexual performance by  
2 producing, directing, or promoting a sexual performance by a child as  
3 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

4 (13) Distribution to minors, as prohibited in § 5-64-406;

5 (14) Manufacture, deliver, or possess with intent to manufacture  
6 or deliver any controlled substance, as prohibited in § 5-64-401;

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

10 (16) Carnal abuse in the third degree as prohibited in § 5-14-  
11 106;

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

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

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

17 (20) False imprisonment in the first degree as prohibited in § 5-  
18 11-103;

19 (21) Permanent detention or restraint as prohibited in § 5-11-  
20 106;

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

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

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

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

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

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

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

29 (29) Endangering the welfare of a minor in the second degree as  
30 prohibited by § 5-27-204.

31 (2) *Provided, however, that the board of directors of a local school*  
32 *district or education service cooperative is authorized to offer provisional*  
33 *employment to an applicant pending receipt of eligibility information from the*  
34 *Department of Education.*

35 (c)(1) Any information received by the *Department of Education* from the  
36 Identification Bureau of the Department of Arkansas State Police pursuant to

1 this act shall not be available for examination except by the affected  
2 applicant for employment or his duly authorized representative, and no record,  
3 file, or document shall be removed from the custody of the *department*.

4           (2) Any information made available to the affected applicant for  
5 employment shall be information pertaining to that applicant only.

6           (3) Rights of privilege and confidentiality established herein  
7 shall not extend to any document created for purposes other than this  
8 background check.

9           (d) As used in this act, "noncertified staff position" means any job  
10 that does not require the person to hold a license issued by the State Board  
11 of Education and is either a full-time job, a full-time/part-time job, or is a  
12 job as a substitute teacher for thirty (30) days or more during a school year.  
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14           SECTION 2. It is the clear intent of the General Assembly to authorize  
15 each public school district at its discretion to require criminal background  
16 checks of existing non-certified employees in the same manner and subject to  
17 the same terms and conditions as set forth in this act for newly hired non-  
18 certified applicants. Any school district which by a vote of its local school  
19 board of directors requires criminal background checks for existing non-  
20 certified employees shall pay the full cost of the criminal background checks.  
21

22           SECTION 3. Employees, whether new or existing, who have a contract with  
23 or work for more than one school district in one (1) year shall be required to  
24 have only one criminal background check to satisfy the requirements of all  
25 employing school districts for that year.  
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27           SECTION 4. All provisions of this act of a general and permanent nature  
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
29 Revision Commission shall incorporate the same in the Code.  
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31           SECTION 5. If any provision of this act or the application thereof to  
32 any person or circumstance is held invalid, such invalidity shall not affect  
33 other provisions or applications of the act which can be given effect without  
34 the invalid provision or application, and to this end the provisions of this  
35 act are declared to be severable.  
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1 SECTION 6. All laws and parts of laws in conflict with this act are  
2 hereby repealed.

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4 SECTION 7. EMERGENCY. It is found and determined by the Eighty-First  
5 General Assembly that Arkansas public school students and their parents or  
6 guardians should be confident that any person who is newly employed in a  
7 noncertified position by the local school district *or education service*  
8 *cooperative* does not have a criminal record and is not a potential threat to  
9 the safety of children; and that an increasing number of incidents are  
10 occurring where persons newly hired by local school districts *or education*  
11 *service cooperatives* are sexually, physically, or emotionally abusing students  
12 entrusted into their care; and that in some cases these incidents could have  
13 been avoided had the new employees been subjected to a criminal records check.  
14 Therefore, an emergency is hereby declared to exist and this Act being  
15 necessary for the immediate preservation of the public peace, health, and  
16 safety, shall become effective on the date of its approval by the Governor.  
17 If the bill is neither approved nor vetoed by the Governor, it shall become  
18 effective on the expiration of the period of time during which the Governor  
19 may veto the bill. If the bill is vetoed by the Governor and the veto is  
20 overridden, it shall become effective on the date the last house overrides the  
21 veto.

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*/s/Rep. Ingram*

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