

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 Enrolled: H3/12/97 H3/26/97 S4/3/97

## A Bill

ACT 1317 OF 1997  
HOUSE BILL 1475

5 By: Representative Young  
6  
7

### For An Act To Be Entitled

9 "AN ACT TO PROVIDE THAT ADJUDICATIONS OF GUILT FOR  
10 MISDEMEANOR SEX OFFENSES AND MISDEMEANORS INVOLVING  
11 VIOLENCE CAN BE USED MAKING PROFESSIONAL LICENSING  
12 DECISIONS; TO REQUIRE LICENSED PROFESSIONAL AND ASSOCIATE  
13 COUNSELORS, SOCIAL WORKERS, PSYCHOLOGISTS, PSYCHOLOGICAL  
14 EXAMINERS TO UNDERGO A CRIMINAL BACKGROUND CHECK PRIOR TO  
15 BEING ISSUED A PROFESSIONAL LICENSE IN THIS STATE; AND FOR  
16 OTHER PURPOSES."

### Subtitle

17  
18  
19 "TO REQUIRE A CRIMINAL BACKGROUND CHECK  
20 BE PERFORMED BEFORE CERTAIN PROFESSIONAL  
21 LICENSES ARE ISSUED IN THIS STATE."  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code Annotated § 17-1-103, relating to criminal  
26 offenders and professional licensure, is amended to read as follows:

27 "17-1-103. Registration, certification, and licensing for criminal  
28 offenders.

29 (a) It is the policy of the State of Arkansas to encourage and  
30 contribute to the rehabilitation of criminal offenders and to assist them in  
31 the assumption of the responsibilities of citizenship. The public is best  
32 protected when offenders are given the opportunity to secure employment or to  
33 engage in a meaningful trade, occupation, or profession.

34 (b) Subject to the provisions of subsection (c) of this section, in  
35 determining eligibility under this section, the board, commission, department,  
36 or agency may take into consideration conviction of certain crimes which have

1 not been annulled, expunged, or pardoned. However, such convictions shall not  
2 operate as an automatic bar to registration, certification, or licensing for  
3 any trade, profession, or occupation.

4 (c) The following criminal records shall not be used, distributed, or  
5 disseminated in connection with an application for a registration, license, or  
6 certificate:

7 (1) Records of arrest not followed by a valid felony conviction  
8 by the courts;

9 (2) Convictions which have been annulled or expunged or pardoned  
10 by the Governor; and

11 (3) Misdemeanor convictions, except misdemeanor sex offenses and  
12 misdemeanors involving violence.

13 (d) The board, commission, department, or agency shall state explicitly  
14 in writing the reasons for a decision which prohibits the applicant from  
15 practicing the trade, occupation, or profession if the decision is based in  
16 whole or in part on conviction of a felony.

17 (e) For the purposes of this section, completion of the following shall  
18 be deemed prima facie evidence of sufficient rehabilitation:

19 (1) Probation or parole supervision; ~~or~~ and

20 (2) A period of ~~three (3)~~ five (5) years after final discharge or  
21 release from any term of imprisonment in the state penitentiary without any  
22 subsequent conviction.

23 (f) Any complaints concerning the violation of this section shall be  
24 adjudicated in accordance with the procedure set forth in the Arkansas  
25 Administrative Procedure Act, as amended, § 25-15-201 et seq., for  
26 administrative and judicial review.

27 (g) This section shall apply to any board, commission, department,  
28 agency, or any other body that deals in licensing or regulating a profession,  
29 trade, or occupation in the State of Arkansas.

30 (h) It shall be the duty of the Secretary of State to make this section  
31 known to any board, commission, department, or agency affected by this  
32 section."

33

34 SECTION 2. Arkansas Code § 17-27-301, relating to eligibility for  
35 licensure of professional counselors, is amended to read as follows:

36 "17-27-301. Licensed professional counselor - Qualifications.

1           The board shall issue a license as a licensed professional counselor to  
2 each applicant who files an application upon a form and in such manner as the  
3 board prescribes, accompanied by a fee as set by the board, and who furnishes  
4 satisfactory evidence of the following to the board:

5           (1) The applicant is not a minor under the laws of Arkansas;

6           (2) The applicant is highly regarded in personal character and  
7 professional ethics;

8           (3) The applicant is not in violation of any of the provisions of this  
9 chapter and the rules and regulations adopted hereunder;

10           (4) The applicant has applied for a criminal background check and has  
11 not been found guilty of or pleaded guilty or nolo contendere to any of the  
12 offenses listed in § 17-27-309(f);

13 ~~——(4)(5)~~ The applicant has received a graduate degree from a regionally  
14 accredited institution of higher education which is primarily professional  
15 counseling in content and has accumulated at least thirty-six (36) graduate  
16 semester hours and which meets the academic and training content standard  
17 established by the board. The board shall use the standards for the  
18 preparation of counselors prepared by that special professional association  
19 nationally as a guide in establishing the standards for counseling;

20 ~~——(5)(6)~~ The applicant has three (3) years of supervised full-time  
21 experience in professional counseling acceptable to the board. One (1) year of  
22 experience may be gained for each thirty (30) graduate semester hours earned  
23 beyond the master's degree, provided that the hours are clearly related to the  
24 field of counseling and are acceptable to the board. In no case may the  
25 applicant have less than one (1) year of professional experience; and

26 ~~——(6)(7)~~ The applicant will declare special competencies and demonstrate  
27 professional competence in specialty areas by passing a written or oral or  
28 situational examination, or any combination thereof, as the board will  
29 prescribe. Upon examination of credentials the board, by a majority of the  
30 board members present and voting, may consider such credentials adequate  
31 evidence of professional competence and recommend to the chairman of the board  
32 that a license be approved in that specialty."

33

34           SECTION 3. Arkansas Code Annotated § 17-27-302, relating to eligibility  
35 for licensure of associate counselors, is amended to read as follows:

36           "17-27-302. Licensed associate counselor - Qualifications.

1 (a) The board shall issue a license of licensed associate counselor to  
2 each applicant who meets the requirements established in § 17-27-301, with the  
3 exception of § 17-27-301(5)(6).

4 (b) The licensed associate counselor may practice only under direct  
5 supervision of a licensed professional counselor.

6 (c) The plan for supervision of the licensed associate counselor must  
7 be approved by the board prior to any actual performance of counseling on the  
8 part of the licensed associate counselor.

9 (d) Any licensed associate counselor may petition the board for  
10 licensure review for the licensed professional counselor provided that  
11 requirements of § 17-27-301(5)(6) have been completed."  
12

13 SECTION 4. Arkansas Code Annotated § 17-27-306, relating to licensure  
14 of professional and associate counselors, is amended to read as follows:

15 "17-27-306. Suspension or revocation.

16 (a) The board shall have the power to suspend or revoke the license of  
17 any person found guilty of violating any ethical or professional standard. The  
18 sanction of suspension upon order of the board shall not be for a period  
19 greater than six (6) months. Any licensee thereby sanctioned shall not be  
20 allowed to practice counseling in this state until the termination of the  
21 suspension period and subsequent timely review by the board.

22 (b) The board shall revoke the license of any person who is found  
23 guilty of or pleads guilty or nolo contendere to any offense listed in § 17-  
24 27-309(f), unless the person requests and the board grants a waiver pursuant  
25 to § 17-27-309(h)."  
26

27 SECTION 5. Subchapter 3 of Chapter 27 of Title 17 of the Arkansas Code  
28 Annotated, relating to licensure of professional and associate counselors, is  
29 amended by adding the following new section:

30 "17-27-309. Criminal background checks.

31 (a) On and after October 1, 1997, each first-time applicant for a  
32 license issued by the board shall be required to apply to the Identification  
33 Bureau of the Arkansas State Police for a state and national criminal  
34 background check, to be conducted by the Federal Bureau of Investigation.

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

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

4       (d) Upon completion of the criminal background check, the Identification  
5 Bureau of the Arkansas State Police shall forward all information obtained  
6 concerning the applicant in the commission of any offense listed in subsection  
7 (f) of this section to the board.

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

11       (f) No person shall be eligible to receive or hold a license issued by  
12 the board if that person has pleaded guilty or nolo contendere to, or been  
13 found guilty of, any of the following offenses by any court in the State of  
14 Arkansas, or of any similar offense by a court in another state, or of any  
15 similar offense by a federal court:

16               (1) Capital murder, as prohibited in A.C.A. § 5-10-101;

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

19               (3) Manslaughter, as prohibited in A.C.A. § 5-10-104;

20               (4) Negligent homicide, as prohibited in A.C.A. § 5-10-105;

21               (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;

22               (6) False imprisonment in the first degree, as prohibited in  
23 A.C.A. § 5-11-103;

24               (7) Permanent detention or restraint, as prohibited in A.C.A.  
25 § 5-11-106;

26               (8) Robbery, as prohibited in A.C.A. § 5-12-102;

27               (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;

28               (10) Battery in the first degree, as prohibited in A.C.A.  
29 § 5-13-201;

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

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

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

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

- 1           (15) Sexual abuse in the first degree and second degree, as  
2 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- 3           (16) Sexual solicitation of a child, as prohibited in A.C.A.  
4 § 5-14-110;
- 5           (17) Violation of a minor in the first degree and second degree,  
6 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- 7           (18) Incest, as prohibited in A.C.A. § 5-26-202;
- 8           (19) Offenses against the family, as prohibited in A.C.A. §§ 5-  
9 26-303 - 5-26-306;
- 10          (20) Endangering the welfare of incompetent person in the first  
11 degree, as prohibited in A.C.A. § 5-27-201;
- 12          (21) Endangering the welfare of a minor in the first degree, as  
13 prohibited in A.C.A. § 5-27-203;
- 14          (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
15 and (a)(3) of A.C.A. § 5-27-221;
- 16          (23) Engaging children in sexually explicit conduct for use in  
17 visual or print media, transportation of minors for prohibited sexual conduct,  
18 or pandering or possessing visual or print medium depicting sexually explicit  
19 conduct involving a child, or use of a child or consent to use of a child in a  
20 sexual performance by producing, directing, or promoting a sexual performance  
21 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,  
22 and 5-27-403;
- 23          (24) Felony adult abuse, as prohibited in A.C.A. § 5-28-103;
- 24          (25) Theft of property, as prohibited in A.C.A. § 5-36-103;
- 25          (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;
- 26          (27) Arson, as prohibited in A.C.A. § 5-38-301;
- 27          (28) Burglary, as prohibited in A.C.A. § 5-39-201;
- 28          (29) Felony violation of the Uniform Controlled Substances Act,  
29 as prohibited in A.C.A. § 5-64-401;
- 30          (30) Promotion of prostitution in the first degree, as prohibited  
31 in A.C.A. § 5-70-104;
- 32          (31) Stalking, as prohibited in A.C.A. § 5-71-229; and
- 33          (32) Criminal attempt, criminal complicity, criminal  
34 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,  
35 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
36 subsection.

1           (g)(1) The board may issue a six-month nonrenewable letter of  
2 provisional eligibility for licensure to a first-time applicant pending the  
3 results of the criminal background check.

4           (2) Upon receipt of information from the Identification Bureau of  
5 the Arkansas State Police that the person holding such letter of provisional  
6 licensure has pleaded guilty or nolo contendere to, or been found guilty of,  
7 any offense listed in subsection (f) of this section, the board shall  
8 immediately revoke the provisional license.

9           (h)(1) The provisions of subsections (f) and (g)(2) of this section may  
10 be waived by the board upon the request of:

11                   (A) An affected applicant for licensure; or

12                   (B) The person holding a license subject to revocation.

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

15                   (A) The age at which the crime was committed;

16                   (B) The circumstances surrounding the crime;

17                   (C) The length of time since the crime;

18                   (D) Subsequent work history;

19                   (E) Employment references;

20                   (F) Character references; and

21                   (G) Other evidence demonstrating that the applicant does  
22 not pose a threat to the health or safety of children.

23           (i) Any information received by the board from the Identification  
24 Bureau of the Arkansas State Police pursuant to this section shall not be  
25 available for examination except by the affected applicant for licensure, or  
26 his authorized representative, or the person whose license is subject to  
27 revocation, or his authorized representative. No record, file, or document  
28 shall be removed from the custody of the Arkansas State Police.

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

32           (k) Rights of privilege and confidentiality established herein shall  
33 not extend to any document created for purposes other than this background  
34 check.

35           (l) The board shall adopt the necessary rules and regulations to fully  
36 implement the provisions of this section.

1           (m) By October 1, 2000, all persons licensed by the board prior to  
 2 October 1, 1997, shall be required to apply for a criminal history check in  
 3 the same manner as an applicant for licensure under this section. The board  
 4 shall develop and adopt a regulation that prescribes how criminal history  
 5 checks for persons licensed prior to October 1, 1997 will be phased-in during  
 6 the period prior to October 1, 2000."

7  
 8           SECTION 6. Arkansas Code 17-46-305, relating to licensure of social  
 9 workers, is amended to read as follows:

10           "17-46-305. Renewal, revocation, suspension - Disciplinary proceedings.

11           (a) The board may refuse to issue or renew a license or may revoke or  
 12 suspend a license issued under this chapter for any of the following causes or  
 13 reasons:

- 14                   (1) Violation of a provision of this chapter;
- 15                   (2) Gross negligence in the practice of social work; or
- 16                   (3) Engaging in a course of unprofessional conduct as defined by  
 17 the rules established by the board or violation of the code of ethics made and  
 18 published by the board;
- 19 ~~(4) Conviction in this or any other state of any crime that is a~~  
 20 ~~felony in this state; or~~
- 21 ~~(5) Has been convicted of a felony in a federal court.~~

22           (b) The board shall refuse to issue or revoke the license of any person  
 23 who is found guilty of or pleads guilty or nolo contendere to any offense  
 24 listed in § 17-46-307(f), unless the person requests and the board grants a  
 25 waiver pursuant to 17-46-307(h).

26 ~~(b)(c)~~ Hearings shall be conducted by the board. Decisions will be  
 27 determined by a majority vote of the board. All proceedings will be conducted  
 28 in accordance with the Arkansas Administrative Procedure Act, as amended, §  
 29 25-15-201 et seq."

30  
 31           SECTION 7. Arkansas Code § 17-46-306, relating to eligibility for  
 32 licensure of social workers, is amended to read as follows:

33           "17-46-306. Qualifications - Issuance.

34           (a) The board shall issue a license as a licensed social worker to an  
 35 applicant who qualifies as follows:

- 36                   (1) Has a baccalaureate degree in a social work program

1 accredited by the Council on Social Work Education or receives before June 17,  
2 1986, a baccalaureate degree in a social work program from an accredited  
3 educational institution; ~~and~~

4 (2) Has passed an examination approved by the board for this  
5 purpose and level of practice; and

6 (3) Has applied for a criminal background check and has not been  
7 found guilty of or pleaded guilty or nolo contendere to any of the offenses  
8 listed in 17-46-307(f).

9 (b) The board shall issue a license as a licensed master social worker  
10 to an applicant who qualifies as follows:

11 (1) Has a master's degree from an accredited social work program  
12 in an accredited institution approved by the Council on Social Work Education;  
13 ~~and~~

14 (2) Has passed an examination approved by the board for this  
15 purpose and level of practice; and

16 (3) Has applied for a criminal background check and has not been  
17 found guilty of or pleaded guilty or nolo contendere to any of the offenses  
18 listed in 17-46-307(f).

19 (c) The board shall issue a license as a licensed certified social  
20 worker to an applicant who qualifies as follows:

21 (1) Has a master's degree from an accredited social work program  
22 in an accredited institution approved by the Council on Social Work Education;

23 (2) Has two (2) years of supervised social work experience in a  
24 clinical or nonclinical concentration by a licensed certified social worker  
25 licensed under this law beyond the master's degree; ~~and~~

26 (3) Has passed an examination approved by the board for this  
27 purpose and level of practice; and

28 (4) Has applied for a criminal background check and has not been  
29 found guilty of or pleaded guilty or nolo contendere to any of the offenses  
30 listed in 17-46-307(f)."

31

32 SECTION 8. Subchapter 3 of Chapter 46 of Title 17 of the Arkansas Code  
33 Annotated, relating to licensure of social workers, is amended by adding the  
34 following new section:

35 "17-46-307. Criminal background checks.

36 (a) On and after October 1, 1997, each first-time applicant for a

1 license issued by the board shall be required to apply to the Identification  
2 Bureau of the Arkansas State Police for a state and national criminal  
3 background check, to be conducted by the Federal Bureau of Investigation.

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

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

9 (d) Upon completion of the criminal background check, the Identification  
10 Bureau of the Arkansas State Police shall forward all information obtained  
11 concerning the applicant in the commission of any offense listed in subsection  
12 (f) of this section to the board.

13 (e) At the conclusion of any background check required by this section,  
14 the Identification Bureau of the Arkansas State Police shall promptly destroy  
15 the fingerprint card of the applicant.

16 (f) No person shall be eligible to receive or hold a license issued by  
17 the board if that person has pleaded guilty or nolo contendere to, or been  
18 found guilty of, any of the following offenses by any court in the State of  
19 Arkansas, or of any similar offense by a court in another state, or of any  
20 similar offense by a federal court:

21 (1) Capital murder, as prohibited in A.C.A. § 5-10-101;

22 (2) Murder in the first degree and second degree, as prohibited  
23 in A.C.A. §§ 5-10-102 and 5-10-103;

24 (3) Manslaughter, as prohibited in A.C.A. § 5-10-104;

25 (4) Negligent homicide, as prohibited in A.C.A. § 5-10-105;

26 (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;

27 (6) False imprisonment in the first degree, as prohibited in  
28 A.C.A. § 5-11-103;

29 (7) Permanent detention or restraint, as prohibited in A.C.A.  
30 § 5-11-106;

31 (8) Robbery, as prohibited in A.C.A. § 5-12-102;

32 (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;

33 (10) Battery in the first degree, as prohibited in A.C.A.  
34 § 5-13-201;

35 (11) Aggravated assault, as prohibited in A.C.A. § 5-13-204;

36 (12) Introduction of controlled substance into body of another

- 1 person, as prohibited in A.C.A. § 5-13-210;  
2                   (13) Terroristic threatening in the first degree, as prohibited  
3 in A.C.A. § 5-13-301;  
4                   (14) Rape and carnal abuse in the first degree, second degree,  
5 and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;  
6                   (15) Sexual abuse in the first degree and second degree, as  
7 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;  
8                   (16) Sexual solicitation of a child, as prohibited in A.C.A.  
9 § 5-14-110;  
10                   (17) Violation of a minor in the first degree and second degree,  
11 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;  
12                   (18) Incest, as prohibited in A.C.A. § 5-26-202;  
13                   (19) Offenses against the family, as prohibited in A.C.A. §§ 5-  
14 26-303 - 5-26-306;  
15                   (20) Endangering the welfare of incompetent person in the first  
16 degree, as prohibited in A.C.A. § 5-27-201;  
17                   (21) Endangering the welfare of a minor in the first degree, as  
18 prohibited in A.C.A. § 5-27-203;  
19                   (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
20 and (a)(3) of A.C.A. § 5-27-221;  
21                   (23) Engaging children in sexually explicit conduct for use in  
22 visual or print media, transportation of minors for prohibited sexual conduct,  
23 or pandering or possessing visual or print medium depicting sexually explicit  
24 conduct involving a child, or use of a child or consent to use of a child in a  
25 sexual performance by producing, directing, or promoting a sexual performance  
26 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,  
27 and 5-27-403;  
28                   (24) Felony adult abuse, as prohibited in A.C.A. § 5-28-103;  
29                   (25) Theft of property, as prohibited in A.C.A. § 5-36-103;  
30                   (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;  
31                   (27) Arson, as prohibited in A.C.A. § 5-38-301;  
32                   (28) Burglary, as prohibited in A.C.A. § 5-39-201;  
33                   (29) Felony violation of the Uniform Controlled Substances Act,  
34 as prohibited in A.C.A. § 5-64-401;  
35                   (30) Promotion of prostitution in the first degree, as prohibited  
36 in A.C.A. § 5-70-104;

1                   (31) Stalking, as prohibited in A.C.A. § 5-71-229; and  
2                   (32) Criminal attempt, criminal complicity, criminal  
3 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,  
4 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
5 subsection.

6                   (g)(1) The board may issue a six-month nonrenewable letter of  
7 provisional eligibility for licensure to a first-time applicant pending the  
8 results of the criminal background check.

9                   (2) Upon receipt of information from the Identification Bureau of  
10 the Arkansas State Police that the person holding such letter of provisional  
11 licensure has pleaded guilty or nolo contendere to, or been found guilty of,  
12 any offense listed in subsection (f) of this section, the board shall  
13 immediately revoke the provisional license.

14                   (h)(1) The provisions of subsections (f) and (g)(2) of this section may  
15 be waived by the board upon the request of:

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

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

- 20                                   (A) The age at which the crime was committed;  
21                                   (B) The circumstances surrounding the crime;  
22                                   (C) The length of time since the crime;  
23                                   (D) Subsequent work history;  
24                                   (E) Employment references;  
25                                   (F) Character references; and  
26                                   (G) Other evidence demonstrating that the applicant does  
27 not pose a threat to the health or safety of children.

28                   (i) Any information received by the board from the Identification  
29 Bureau of the Arkansas State Police pursuant to this section shall not be  
30 available for examination except by the affected applicant for licensure, or  
31 his authorized representative, or the person whose license is subject to  
32 revocation, or his authorized representative. No record, file, or document  
33 shall be removed from the custody of the Arkansas State Police.

34                   (j) Any information made available to the affected applicant for  
35 licensure or the person whose license is subject to revocation shall be  
36 information pertaining to that person only.

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

4 (l) The board shall adopt the necessary rules and regulations to fully  
5 implement the provisions of this section.

6 (m) By October 1, 2000, all persons licensed by the board prior to  
7 October 1, 1997, shall be required to apply for a criminal history check in  
8 the same manner as an applicant for licensure under this section. The board  
9 shall develop and adopt a regulation that prescribes how criminal history  
10 checks for persons licensed prior to October 1, 1997 will be phased-in during  
11 the period prior to October 1, 2000."

12

13 SECTION 9. Arkansas Code Annotated § 17-97-302(b), relating to  
14 eligibility for licensure of psychologists, is amended to read as follows:

15 "(b)(1) A candidate for a license shall furnish the board with  
16 satisfactory evidence that he:

17 (A) Is of good moral character;

18 (B) Has received a doctoral degree in psychology from an  
19 accredited institution recognized by the board as maintaining satisfactory  
20 standards at the time the degree was granted or, in lieu of degree, a doctoral  
21 degree in a closely allied field, if it is the opinion of the board that the  
22 training required therefor is substantially similar;

23 (C) Has had at least ~~one (1) year~~ two (2) years of  
24 experience in psychology of a type considered by the board to be qualifying in  
25 nature with at least one (1) of those years being post doctoral work;

26 (D) Is competent in psychology, as shown by passing such  
27 examinations, written or oral, or both, as the board deems necessary;

28 (E) Is not considered by the board to be engaged in  
29 unethical practice; ~~and~~

30 (F) Has applied for a criminal background check and has not  
31 been found guilty of or pleaded guilty or nolo contendere to any of the  
32 offenses listed in § 17-97-312(f); and

33 ~~\_\_\_\_\_ (F)(G)~~ (G) Has not, within the preceding six (6) months, failed  
34 an examination given by the board.

35 (2) The board may at its discretion accept satisfactory  
36 substitute training and experience in lieu of that prescribed in subdivision

1 (b)(1) of this section."

2

3 SECTION 10. Arkansas Code Annotated § 17-97-303(b), relating to  
4 eligibility for licensure of psychological examiners, is amended to read as  
5 follows:

6 "(b)(1) A candidate for a license shall furnish the board with  
7 satisfactory evidence that he:

8 (A) Is of good moral character;

9 (B) Has had two (2) academic years of graduate training in  
10 psychology, including a master's degree from an accredited educational  
11 institution recognized by the board as maintaining satisfactory standards or,  
12 in lieu thereof, such training and experience as the board shall consider  
13 equivalent;

14 (C) Is competent as a psychological examiner as shown by  
15 passing such examinations, written or oral, or both, as the board deems  
16 necessary;

17 (D) Is not considered by the board to be engaged in  
18 unethical practice; ~~and~~

19 (E) Has applied for a criminal background check and has not  
20 been found guilty of or pleaded guilty or nolo contendere to any of the  
21 offenses listed in § 17-97-312(f); and

22 ~~\_\_\_\_\_ (E)(F) Has not, within the preceding six (6) months, failed~~  
23 ~~an examination given by the board.~~

24 (2) The board may at its discretion accept satisfactory  
25 substitute training and experience in lieu of that prescribed in subdivision  
26 (b)(1) of this section."

27

28 SECTION 11. Arkansas Code Annotated § 17-97-310, relating to licensure  
29 of psychologists and psychological examiners, is amended to read as follows:

30 "17-97-310. Denial, suspension, or revocation - Grounds - Reinstatement.

31 (a) The Arkansas Board of Examiners in Psychology may refuse to grant a  
32 certificate or may recommend suspension of any license for a period to be  
33 determined by the board, on the following grounds:

34 (1) The employment of fraud or deception in applying for a  
35 license or in passing the examination provided for in this chapter;

36 ~~\_\_\_\_\_ (2) Conviction of felony;~~

1 ~~\_\_\_\_\_ (3)(2)~~ The practice of psychology under a false or assumed name  
2 or the impersonation of another practitioner of a like or different name;

3 ~~\_\_\_\_\_ (4)(3)~~ Habitual intemperance in the use of ardent spirits,  
4 narcotics, or stimulants to such an extent as to incapacitate the licensee or  
5 applicant for the performance of his duties;

6 ~~\_\_\_\_\_ (5)(4)~~ Violation of the Arkansas Medical Practices Act, § 17-95-  
7 201 et seq.;

8 ~~\_\_\_\_\_ (6)(5)~~ Practice of a level of psychology inappropriate to the  
9 particular license held by the licentiate;

10 ~~\_\_\_\_\_ (7)(6)~~ Upon recommendation of the ethics committee of the  
11 Arkansas Psychological Association or of the American Psychological  
12 Association; or

13 ~~\_\_\_\_\_ (8)(7)~~ Negligence or wrongful actions in the performance of his  
14 duties.

15 (b) The board shall refuse to issue or revoke the license of any person  
16 who has been found guilty of or pleaded guilty or nolo contendere to any of  
17 the offenses listed in 17-97-312(f), unless the person requests and the board  
18 grants a waiver pursuant to 17-97-312(h).

19 ~~\_\_\_\_\_ (b)(c)(1)~~ Upon satisfactory proof that any applicant or licentiate has  
20 been guilty of any of the above offenses, the board may refuse to grant a  
21 certificate to the applicant or may revoke a license of the licentiate upon a  
22 vote of at least three (3) members of the board.

23 (2) An application for reinstatement may be made to the board,  
24 and the board may, upon favorable action by three (3) of its members,  
25 reinstate the applicant."  
26

27 SECTION 12. Subchapter 3 of Chapter 97 of Title 17 of the Arkansas Code  
28 Annotated, relating to licensure of psychologists and psychological examiners,  
29 is amended to read as follows:

30 "17-97-312. Criminal background checks.

31 (a) On and after October 1, 1997, each first-time applicant for a  
32 license issued by the board shall be required to apply to the Identification  
33 Bureau of the Arkansas State Police for a state and national criminal  
34 background check, to be conducted by the Federal Bureau of Investigation.

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

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

4       (d) Upon completion of the criminal background check, the Identification  
5 Bureau of the Arkansas State Police shall forward all information obtained  
6 concerning the applicant in the commission of any offense listed in subsection  
7 (f) of this section to the board.

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

11       (f) No person shall be eligible to receive or hold a license issued by  
12 the board if that person has pleaded guilty or nolo contendere to, or been  
13 found guilty of, any of the following offenses by any court in the State of  
14 Arkansas, or of any similar offense by a court in another state, or of any  
15 similar offense by a federal court:

16               (1) Capital murder, as prohibited in A.C.A. § 5-10-101;

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

19               (3) Manslaughter, as prohibited in A.C.A. § 5-10-104;

20               (4) Negligent homicide, as prohibited in A.C.A. § 5-10-105;

21               (5) Kidnapping, as prohibited in A.C.A. § 5-11-102;

22               (6) False imprisonment in the first degree, as prohibited in  
23 A.C.A. § 5-11-103;

24               (7) Permanent detention or restraint, as prohibited in A.C.A.  
25 § 5-11-106;

26               (8) Robbery, as prohibited in A.C.A. § 5-12-102;

27               (9) Aggravated robbery, as prohibited in A.C.A. § 5-12-103;

28               (10) Battery in the first degree, as prohibited in A.C.A.  
29 § 5-13-201;

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

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

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

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

- 1           (15) Sexual abuse in the first degree and second degree, as  
2 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- 3           (16) Sexual solicitation of a child, as prohibited in A.C.A.  
4 § 5-14-110;
- 5           (17) Violation of a minor in the first degree and second degree,  
6 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- 7           (18) Incest, as prohibited in A.C.A. § 5-26-202;
- 8           (19) Offenses against the family, as prohibited in A.C.A. §§ 5-  
9 26-303 - 5-26-306;
- 10           (20) Endangering the welfare of incompetent person in the first  
11 degree, as prohibited in A.C.A. § 5-27-201;
- 12           (21) Endangering the welfare of a minor in the first degree, as  
13 prohibited in A.C.A. § 5-27-203;
- 14           (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
15 and (a)(3) of A.C.A. § 5-27-221;
- 16           (23) Engaging children in sexually explicit conduct for use in  
17 visual or print media, transportation of minors for prohibited sexual conduct,  
18 or pandering or possessing visual or print medium depicting sexually explicit  
19 conduct involving a child, or use of a child or consent to use of a child in a  
20 sexual performance by producing, directing, or promoting a sexual performance  
21 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,  
22 and 5-27-403;
- 23           (24) Felony adult abuse, as prohibited in A.C.A. § 5-28-103;
- 24           (25) Theft of property, as prohibited in A.C.A. § 5-36-103;
- 25           (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;
- 26           (27) Arson, as prohibited in A.C.A. § 5-38-301;
- 27           (28) Burglary, as prohibited in A.C.A. § 5-39-201;
- 28           (29) Felony violation of the Uniform Controlled Substances Act,  
29 as prohibited in A.C.A. § 5-64-401;
- 30           (30) Promotion of prostitution in the first degree, as prohibited  
31 in A.C.A. § 5-70-104;
- 32           (31) Stalking, as prohibited in A.C.A. § 5-71-229; and
- 33           (32) Criminal attempt, criminal complicity, criminal  
34 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,  
35 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
36 subsection.

1           (g)(1) The board may issue a six-month nonrenewable letter of  
2 provisional eligibility for licensure to a first-time applicant pending the  
3 results of the criminal background check.

4           (2) Upon receipt of information from the Identification Bureau of  
5 the Arkansas State Police that the person holding such letter of provisional  
6 licensure has pleaded guilty or nolo contendere to, or been found guilty of,  
7 any offense listed in subsection (f) of this section, the board shall  
8 immediately revoke the provisional license.

9           (h)(1) The provisions of subsections (f) and (g)(2) of this section may  
10 be waived by the board upon the request of:

11                   (A) An affected applicant for licensure; or

12                   (B) The person holding a license subject to revocation.

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

15                   (A) The age at which the crime was committed;

16                   (B) The circumstances surrounding the crime;

17                   (C) The length of time since the crime;

18                   (D) Subsequent work history;

19                   (E) Employment references;

20                   (F) Character references; and

21                   (G) Other evidence demonstrating that the applicant does  
22 not pose a threat to the health or safety of children.

23           (i) Any information received by the board from the Identification  
24 Bureau of the Arkansas State Police pursuant to this section shall not be  
25 available for examination except by the affected applicant for licensure, or  
26 his authorized representative, or the person whose license is subject to  
27 revocation, or his authorized representative. No record, file, or document  
28 shall be removed from the custody of the Arkansas State Police.

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

32           (k) Rights of privilege and confidentiality established herein shall  
33 not extend to any document created for purposes other than this background  
34 check.

35           (l) The board shall adopt the necessary rules and regulations to fully  
36 implement the provisions of this section.

1           (m) By October 1, 2000, all persons licensed by the board prior to  
2 October 1, 1997, shall be required to apply for a criminal history check in  
3 the same manner as an applicant for licensure under this section. The board  
4 shall develop and adopt a regulation that prescribes how criminal history  
5 checks for persons licensed prior to October 1, 1997 will be phased-in during  
6 the period prior to October 1, 2000."

7

8           SECTION 13. All provisions of this act of a general and permanent  
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
10 Code Revision Commission shall incorporate the same in the Code.

11

12           SECTION 14. If any provision of this act or the application thereof to  
13 any person or circumstance is held invalid, such invalidity shall not affect  
14 other provisions or applications of the act which can be given effect without  
15 the invalid provision or application, and to this end the provisions of this  
16 act are declared to be severable.

17

18           SECTION 15. All laws and parts of laws in conflict with this act are  
19 hereby repealed.

20

21           SECTION 16. EMERGENCY. It is found and determined by the General  
22 Assembly of the State of Arkansas that Arkansas children and their parents or  
23 guardians should be secure in the knowledge that professional persons who have  
24 direct contact with children do not have criminal records and are not a  
25 potential threat to the safety of their children; and that an increasing  
26 number of incidents are occurring where professional persons are abusing  
27 children entrusted into their care; and that in some cases these incidents  
28 could have been avoided had the persons been subjected to a criminal  
29 background check. It is further found and determined that, in some instances,  
30 allegations of employee criminal misconduct involving children are not being  
31 investigated. Therefore, an emergency is declared to exist and this act being  
32 immediately necessary for the preservation of the public peace, health and  
33 safety shall become effective on October 1, 1997.

34

/s/Rep. Young

35

36

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