

1 State of Arkansas  
2 84th General Assembly  
3 First Extraordinary Session, 2003  
4

# A Bill

Call Item 17  
Act 63 of 2003  
HOUSE BILL 1053

5 By: Representative Mahony  
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7

## 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:  
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27 SECTION 1. Title.

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

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 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.

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.

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.

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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22 **APPROVED: 5/13/2003**  
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