

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/24/05 S3/24/05

A Bill

HOUSE BILL 1572

5 By: Representative Bright
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE CHILD WELFARE AGENCY
10 LICENSING ACT.
11

Subtitle

13 AN ACT TO AMEND THE CHILD WELFARE AGENCY
14 LICENSING ACT; AND FOR OTHER PURPOSES.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 9-28-402 is amended to read as follows:
20 9-28-402. Definitions.

21 As used in this subchapter:

22 (1) "Adoptive home" means a household of one (1) or more persons
23 which has been approved by a licensed child placement agency to accept a
24 child for adoption;

25 (2) "Adverse action" means any petition by the division before
26 the Child Welfare Agency Review Board to take any of the following actions
27 against a licensee or applicant for a license:

- 28 (A) Revocation of license;
- 29 (B) Suspension of license;
- 30 (C) Conversion of license from regular status to
31 provisional status;
- 32 (D) Imposition of a civil penalty;
- 33 (E) Denial of application; or
- 34 (F) Reduction of licensed capacity;

35 (3) "Alternative compliance" means a request for approval from
36 the board to allow a licensee to deviate from the letter of a regulation



1 provided that the licensee has demonstrated how an alternate plan of
2 compliance will meet or exceed the intent of the regulation;

3 (4) "Board" means the Child Welfare Agency Review Board;

4 (5) "Boarding school" means an institution that is operated
5 solely for educational purposes and that meets each of the following
6 criteria:

7 (A) The institution is in operation for a period of time
8 not to exceed the minimum number of weeks of classroom instruction required
9 of schools accredited by the Department of Education;

10 (B) The children in residence must customarily return to
11 their family homes or legal guardians during school breaks and must not be in
12 residence year round, except that this provision does not apply to students
13 from foreign countries; and

14 (C) The parents of children placed in the institution
15 retain custody and planning and financial responsibility for the children;

16 (6) "Child welfare agency" means any person, corporation,
17 partnership, voluntary association or other entity or identifiable group of
18 entities having a coordinated ownership of controlling interest, whether
19 established for profit or otherwise, who engages in any of the following
20 activities:

21 (A) Receives a total number of six (6) or more unrelated
22 minors for care on a twenty-four-hour basis for the purpose of ensuring the
23 minors receive care, training, education, custody, or supervision, whether or
24 not there are six (6) or more children cared for at any single physical
25 location;

26 (B) Places any unrelated minor for care on a twenty-four-
27 hour basis with persons other than themselves; or

28 (C) Plans for or assists in the placements described in
29 subdivision (a)(6)(B) of this section;

30 (7) "Child placement agency" means a child welfare agency, not
31 including any person licensed to practice medicine or law in the State of
32 Arkansas, who engages in any of the following activities:

33 (A) Places a child in a foster home, adoptive home, or any
34 type of facility licensed or exempted by this subchapter;

35 (B) Plans for the placement of a child in a foster home,
36 adoptive home, or any type of facility licensed or exempted by this

1 subchapter; or

2 (C) Assists the placement of a child in a foster home,
3 adoptive home, or any type of facility licensed or exempted by this
4 subchapter;

5 (8)(A) "Class A violation" means violations of essential
6 standards, including those governing fire, health, safety, nutrition, staff-
7 to-child ratio, and space.

8 (B) Operation of an unlicensed child welfare agency shall
9 also be a Class A violation, unless specifically exempted as provided in this
10 subchapter;

11 (9) "Class B violation" means any other violations of standards
12 that are not Class A violations;

13 (10) "Division" means the division within the Department of
14 Human Services that shall be designated by the Director of the Department of
15 Human Services to administer this subchapter;

16 (11) "Emergency child care" means any residential child care
17 facility that provides care to children on a time-limited basis, not to
18 exceed ninety (90) days;

19 (12) "Exempt child welfare agency" means any person,
20 corporation, partnership, voluntary association or other entity, whether
21 established for profit or otherwise, who otherwise fits the definition of a
22 child welfare agency, but who is specifically exempt from the requirement of
23 obtaining a license under this subchapter. Those agencies specifically exempt
24 from the license requirement are:

25 (A) A facility or program owned or operated by an agency
26 of the United States government;

27 (B) Any agency of the State of Arkansas that is
28 statutorily authorized to administer or supervise child welfare activities.
29 In order to maintain exempt status, the state child welfare agency shall
30 state every two (2) years in written form signed by the persons in charge
31 that their agency is in substantial compliance with published state agency
32 child welfare standards. Visits to review and advise exempt state agencies
33 shall be made as deemed necessary by the board to verify and maintain
34 substantial compliance with the standards;

35 (C) A facility or program owned or operated by or under
36 contract with the Department of Correction;

1 (D) A hospital providing acute care licensed pursuant to §
2 20-9-201 et seq.;

3 (E) Any facility governed by the Arkansas State Hospital
4 Board or its successor;

5 (F) Human development centers regulated by the Board of
6 Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

7 (G) Any facility licensed as a family home pursuant to §
8 20-48-601 et seq.;

9 (H) Any boarding school as defined in this section;

10 (I) Any temporary camp as defined in this section;

11 (J) Any state-operated facility to house juvenile
12 delinquents or any serious offender program facility operated by a state
13 designee to house juvenile delinquents. Those facilities shall be subject to
14 program requirements modeled on nationally recognized correctional facility
15 standards which shall be developed, administered, and monitored by the
16 Division of Youth Services of the Department of Human Services;

17 (K) Any child welfare agency operated solely by a
18 religious organization that elects to be exempt from licensing and which
19 complies within the conditions of the exemption for church-operated agencies
20 as set forth in this subchapter;

21 (L) The Division of Developmental Disabilities Services of
22 the Department of Human Services; and

23 (M) Any developmental disabilities services waiver
24 provider licensed under § 20-48-208 or §§ 20-48-601 - 611;

25 (13) "Foster home" means a private residence of one (1) or more
26 family members that receives from a child placement agency any minor child
27 who is unattended by a parent or guardian in order to provide care, training,
28 education, custody, or supervision on a twenty-four-hour basis, not to
29 include adoptive homes;

30 (14) "Independent living home" means any child welfare agency
31 that provides specialized services in adult living preparation in an
32 experiential setting for persons sixteen (16) years of age or older;

33 (15) "Minimum standards" means those rules and regulations as
34 established by the board that set forth the minimum acceptable level of
35 practice for the care of children by a child welfare agency;

36 (16) "Provisional foster home" means a foster home opened for no

1 more than six (6) months by the Division of Children and Family Services of
2 the Department of Human Services on a relative of a child in the custody of
3 the division after the division:

4 (A) Conducts a health and safety check, including a
5 central registry check and a criminal background check or check with local
6 law enforcement, on the relative's home; and

7 (B) Performs a visual inspection of the home of the
8 relative to verify that the relative will meet the standards for opening a
9 regular foster home;

10 ~~(16)~~(17) "Psychiatric residential treatment facility" means a
11 residential child care facility in a nonhospital setting that provides a
12 structured, systematic, therapeutic program of treatment under the
13 supervision of a psychiatrist, for children who are emotionally disturbed and
14 in need of daily nursing services, psychiatrist's supervision, and
15 residential care, but who are not in an acute phase of illness requiring the
16 services of an inpatient psychiatric hospital;

17 (18) "Relative" means a person within the fifth degree of
18 kinship by virtue of blood or adoption;

19 ~~(17)~~(19) "Religious organization" means a church, synagogue, or
20 mosque or association of same whose purpose is to support and serve the
21 propagation of truly held religious beliefs;

22 ~~(18)~~(20) "Residential child care facility" means any child
23 welfare agency that provides care, training, education, custody, or
24 supervision on a twenty-four-hour basis for six (6) or more unrelated minors;

25 ~~(19)~~(21) "Substantial compliance" means compliance with all
26 essential standards necessary to protect the health, safety, and welfare of
27 the children in the care of the child welfare agency. Essential standards
28 include, but are not limited to, those relating to issues involving fire,
29 health, safety, nutrition, discipline, staff-to-child ratio, and space;

30 ~~(20)~~(22) "Temporary camp" means any facility or program
31 providing twenty-four-hour care or supervision to children which meets the
32 following criteria:

33 (A) The facility or program is operated for recreational,
34 educational, or religious purposes only;

35 (B) No child attends the program more than forty (40) days
36 in a calendar year; and

1 (C) The parents of children placed in the program retain
2 custody and planning and financial responsibility for the children during
3 placement; and

4 ~~(21)~~(23) "Unrelated minor" means a child who is not related by
5 blood, marriage, or adoption to the owner or operator of the child welfare
6 agency and who is not a ward of the owner or operator of the child welfare
7 agency pursuant to a guardianship order issued by a court of competent
8 jurisdiction.

9
10 SECTION 2. Arkansas Code § 9-28-407(h)(1) and (2), concerning
11 requirements and issuance of licenses for child welfare agencies, are amended
12 to read as follows:

13 (h)(1) Reports, correspondence, memoranda, case histories, or other
14 materials compiled or received by a licensee or a state agency engaged in
15 placing a child, including both foster care and protective services records,
16 shall be confidential and shall not be released or otherwise made available
17 except to the extent permitted by federal law and only:

18 (A) To the director as required by regulation;

19 (B) For adoptive placements as provided by the Revised
20 Uniform Adoption Act, § 9-9-201 et seq.;

21 (C) To multidisciplinary teams under § 12-12-502(b);

22 (D)(i) To the child's parent, guardian, or custodian.

23 (ii) However, the licensee or state agency may
24 redact information from the record such as the name or address of foster
25 parents or providers when it is in the best interest of the child.

26 (iii) The licensee or state agency may redact
27 counseling records, psychological or psychiatric evaluations, examinations,
28 or records, drug screens or drug evaluations, or similar information
29 concerning a parent if the other parent is requesting a copy of a record;

30 (E) To the child;

31 (F)(i) To health care providers to assist in the care and
32 treatment of the child at the discretion of the licensee or state agency and
33 if deemed to be in the best interest of the child.

34 (ii) "Health care providers" includes doctors,
35 nurses, emergency medical technicians, counselors, therapists, mental health
36 professionals, and dentists;

1 (G) To school personnel and day care centers caring for
2 the child at the discretion of the licensee or state agency and if deemed to
3 be in the best interest of the child;

4 (H)(i) To foster parents, the foster care record for
5 foster children currently placed in their home.

6 (ii) However, information about the parents or
7 guardians and any siblings not in the foster home shall not be released;

8 (I)(i) To the board.

9 (ii) However, at any board meeting no information
10 which identifies by name or address any protective services recipient or
11 foster care child shall be orally disclosed or released in written form to
12 the general public;

13 (J) To the Division of Youth Services of the Department of
14 Human Services, including child welfare agency licensing specialists;

15 (K) For any audit or similar activity conducted in
16 connection with the administration of any such plan or program by any
17 governmental agency which is authorized by law to conduct the audit or
18 activity;

19 (L) Upon presentation of an order of appointment, to a
20 court-appointed special advocate;

21 (M) To the attorney ad litem for the child;

22 (N) For law enforcement or the prosecuting attorney at the
23 discretion of the licensee or state agency and if deemed to be in the best
24 interest of the child;

25 (O) To circuit courts, as provided for in the Arkansas
26 Juvenile Code of 1989, § 9-27-301 et seq.;

27 (P) In a criminal or civil proceeding conducted in
28 connection with the administration of any such plan or program;

29 (Q) For purposes directly connected with the
30 administration of any of the state plans as outlined at 42 U.S.C. 671(a)(8),
31 as in effect January 1, 2001;

32 (R) For the administration of any other federal or
33 federally assisted program which provides assistance, in cash or in kind, or
34 services, directly to individuals on the basis of need; ~~or~~

35 (S)(i) To individual federal and state representatives and
36 senators and their staff members with no redisclosure of information.

1 (ii) No disclosure shall be made to any committee or
2 legislative body of any information which identifies by name or address any
3 recipient of services; or

4 (T) To a grand jury or court upon a finding that
5 information in the record is necessary for the determination of an issue
6 before the court or grand jury.

7 (2) Foster home and adoptive home records are confidential and
8 shall not be released except:

9 (A) To the foster parents or adoptive parents;

10 (B) For purposes of review or audit, by the appropriate
11 federal or state agency;

12 (C) Upon allegations of child maltreatment in the foster
13 home or adoptive home, to the investigating agency;

14 (D) To the board;

15 (E) To the Division of Children and Family Services of the
16 Department of Human Services, including child welfare agency licensing
17 specialists;

18 (F) To law enforcement or the prosecuting attorney upon
19 request;

20 (G) To a grand jury or court upon a finding that
21 information in the record is necessary for the determination of an issue
22 before the court or grand jury; ~~or~~

23 (H)(i) To individual federal and state representatives and
24 senators and their staff members with no redisclosure of information.

25 (ii) No disclosure shall be made to any committee or
26 legislative body of any information that identifies by name or address any
27 recipient of services; or

28 (I) To the attorney ad litem and court-appointed special
29 advocate, the home study on the adoptive family selected by the department to
30 adopt the juvenile.

31
32 SECTION 3. Arkansas Code § 9-28-409 (e), concerning criminal
33 background checks for persons who have direct and unsupervised contact with a
34 child in the care of a child welfare agency, is amended to read as follows:

35 (e)(1) Except as provided in ~~subdivision (d)(2)~~ subdivisions (d)(2) or
36 (h)(1) of this section, no person who is required to have a criminal check

1 under subdivision (b)(1) or (c)(1) of this section shall be eligible to have
2 direct and unsupervised contact with a child in the care of a child welfare
3 agency if that person has pleaded guilty or nolo contendere to or has been
4 found guilty of any of the following offenses by any court in the State of
5 Arkansas or of any similar offense by a court in another state or of any
6 similar offense by a federal court unless the conviction was vacated or
7 reversed:

8 (A) Capital murder as prohibited in § 5-10-101;

9 (B) Murder in the first degree and murder in the second
10 degree as prohibited in §§ 5-10-102 and 5-10-103;

11 (C) Manslaughter as prohibited in § 5-10-104;

12 (D) Negligent homicide as prohibited in § 5-10-105;

13 (E) Kidnapping as prohibited in § 5-11-102;

14 (F) False imprisonment in the first degree and false
15 imprisonment in the second ~~degrees~~ degree as prohibited in §§ 5-11-103 and 5-
16 11-104;

17 (G) Permanent detention or restraint as prohibited in § 5-
18 11-106;

19 (H) Battery in the first degree, battery in the second
20 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-
21 202, and 5-13-203;

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

23 (J) Assault in the first degree and assault in the second
24 degree as prohibited in §§ 5-13-205 and 5-13-206;

25 (K) Terroristic threatening in the first degree and
26 terroristic threatening in the second degree as prohibited in § 5-13-301(a)
27 and (b);

28 (L) Any sexual offense as prohibited in § 5-14-101 et
29 seq.;

30 (M) Permitting abuse of a child as prohibited in § 5-27-
31 221;

32 (N) Endangering the welfare of a minor in the first degree
33 and endangering the welfare of a minor in the second degree as prohibited in
34 §§ 5-27-203 and 5-27-204;

35 (O) Contributing to the delinquency of a minor as
36 prohibited in § 5-27-205;

1 (P) Engaging children in sexually explicit conduct for use
2 in visual or print medium, transportation of minors for prohibited sexual
3 conduct, use of a child or consent to use of a child in sexual performance,
4 and producing, directing, or promoting sexual performance by a child, as
5 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

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

7 (R) Interference with visitation as prohibited in § 5-26-
8 501;

9 (S) Interference with custody as prohibited in § 5-26-502;

10 (T) Engaging in conduct with respect to controlled
11 substances as prohibited in § 5-64-401;

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

13 (V) Public display of obscenity as prohibited in § 5-68-
14 205;

15 (W) Prostitution as prohibited in § 5-70-102;

16 (X) Promoting prostitution in the first degree, promoting
17 prostitution in the second degree, and promoting prostitution in the third
18 degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

19 (Y) Computer child pornography as prohibited in § 5-27-
20 603;

21 (Z) Computer exploitation of a child in the first degree
22 as prohibited in § 5-27-605(a);

23 (AA) Criminal attempt, criminal complicity, criminal
24 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
25 3-301, and 5-3-401 to commit any of the offenses listed in this section;

26 (BB) Any felony or any misdemeanor involving violence,
27 threatened violence, or moral turpitude; or

28 (CC) Any former or future law of this or any other state
29 or of the federal government which is substantially equivalent to one of the
30 aforementioned offenses.

31 (2)(A) Any person who is required to have a criminal check under
32 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
33 contendere to, or is found guilty of, any of the offenses listed in
34 *subdivision (e)(1) of this section, unless the conviction was vacated or*
35 *reversed, shall be absolutely disqualified to be an owner, operator,*
36 *volunteer, foster parent, adoptive parent, member of an agency's board of*

1 directors, or employee in a child welfare agency during the period of his or
2 her confinement, probation, or parole supervision.

3 (B) ~~Any~~ Except as provided in subdivision (h)(1) of this
4 section, any person who is required to have a criminal check under
5 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
6 contendere to, or is found guilty of, any of the offenses listed in
7 subdivision (e)(1) of this section, unless the conviction was vacated or
8 reversed, shall be presumed to be disqualified to be an owner, operator,
9 volunteer, foster parent, adoptive parent, member of an agency's board of
10 directors, or employee in a child welfare agency after the completion of his
11 or her term of confinement, probation, or parole supervision. This
12 presumption can be rebutted in the following manner:

13 (i)(a) The applicant must petition the board to make
14 a determination that the applicant does not pose a risk of harm to any person
15 ~~served by the facility and is therefore qualified to serve in a child welfare~~
16 ~~agency.~~

17 (b) The applicant shall bear the burden of
18 making such a showing; and

19 (ii) The board in its discretion may permit an
20 applicant ~~to serve in a child welfare agency to be an owner, operator,~~
21 volunteer, foster parent, adoptive parent, member of an agency's board of
22 directors, or an employee in a child welfare agency notwithstanding having
23 been convicted of an offense listed in this section upon making a
24 determination that the applicant does not pose a risk of harm to any person
25 served by the facility. In making this determination, the board shall
26 consider the following factors:

27 (a) The nature and severity of the crime;
28 (b) The consequences of the crime;
29 (c) The number and frequency of crimes;
30 (d) The relation between the crime and the
31 health, safety, and welfare of ~~persons served by a child welfare agency~~ any
32 person, such as:

33 (1) The age and vulnerability of victims
34 of the crime;
35 (2) The harm suffered by the victim; and
36 (3) The similarity between the victim

1 and persons served by a child welfare agency;

2 (e) The time elapsed without a repeat of the
3 same or similar event;

4 (f) Documentation of successful completion of
5 training or rehabilitation pertinent to the incident; and

6 (g) Any other information that bears on the
7 applicant's ability to care for children or any other relevant information.

8 (C) The board's decision to disqualify a person ~~-serving in~~
9 ~~a child welfare agency pursuant to~~ from being an owner, operator, volunteer,
10 foster parent, adoptive parent, member of an agency's board of directors, or
11 an employee in a child welfare agency under this section shall constitute the
12 *final administrative agency action and shall not be subject to review.*

13 (h)(1) For the purposes of this section, an expunged record of a
14 conviction or plea of guilty or nolo contendere to an offense listed in
15 subdivision (e)(1) of this section shall not be considered a conviction,
16 guilty plea, or nolo contendere to the offense unless the offense is also
17 listed in subdivision (h)(2) of this section.

18 (2) Because of the serious nature of the offenses and the close
19 relationship to the type of work that is to be performed, the following shall
20 result in permanent disqualification:

21 (A) Capital murder, as prohibited under § 5-10-101;

22 (B) Murder in the first degree and murder in the second
23 degree, as prohibited under § 5-10-102 and § 5-10-103;

24 (C) Kidnapping, as prohibited under § 5-11-102;

25 (D) Rape, as prohibited under § 5-14-103;

26 (E) Sexual assault in the first degree and second degree,
27 as prohibited under § 5-14-124 and § 5-14-125;

28 (F) Endangering the welfare of a minor in the first degree
29 and endangering the welfare of a minor in the second degree, as prohibited
30 under § 5-27-203 and § 5-27-204;

31 (G) Incest, as prohibited under § 5-26-202;

32 (H) Arson, as prohibited under § 5-38-301;

33 (I) Endangering the welfare of an incompetent person in the
34 first degree, as prohibited under § 5-27-201; and

35 (J) Adult abuse that constitutes a felony, as prohibited
36 under § 5-28-103.

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/s/ Bright