

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

As Engrossed: H3/15/99 H3/17/99 S4/6/99

# A Bill

Act 1409 of 1999  
HOUSE BILL 2218

5 By: Representative Taylor  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE CRIMINAL  
10 RECORDS CHECKS FOR PERSONS CARING FOR THE ELDERLY AND  
11 INDIVIDUALS WITH DISABILITIES, ARKANSAS CODE 20-33-201  
12 ET SEQ.; TO AMEND VARIOUS SECTIONS OF THE CRIMINAL  
13 BACKGROUND CHECKS FOR STATE EMPLOYEES, ARKANSAS CODE  
14 21-15-100; AND FOR OTHER PURPOSES."

## Subtitle

16 "TO AMEND THE CRIMINAL BACKGROUND CHECK  
17 LAWS."  
18  
19  
20

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

22  
23 SECTION 1. Arkansas Code 20-33-201 is amended to read as follows:

24 "As used in this subchapter:

25 (1) 'Bureau' means the Identification Bureau of the Department of the  
26 Arkansas State Police~~;~~

27 (2) 'Care' means treatment, services, assistance, education, training,  
28 instruction, or supervision for which the care-giving person or entity is  
29 reimbursed either directly to or by arrangement with a qualified entity~~;~~ or  
30 receives reimbursement or payment either directly or indirectly from Medicaid;

31 (3) 'Determination' means a licensing agency's determination that an  
32 applicant or employee is or is not disqualified from employment or that a  
33 qualified entity is disqualified from licensure based on the criminal history  
34 of the operator~~;~~

35 (4) 'Elderly' means persons aged sixty-five (65) or older~~;~~

36 (5) 'Employee' means any person who provides care to the elderly or to

1 individuals with disabilities or both on behalf of, or under the supervision  
2 of, or by arrangement with a qualified entity or any person employed by a  
3 qualified entity, unless the person is a family member, a volunteer, or works  
4 in an administrative capacity and does not provide direct patient care;

5 (6) 'Individuals with disabilities' means persons with a mental or  
6 physical impairment who requires assistance to perform one or more of the  
7 following tasks of daily living: feeding, mobility, toileting, or  
8 medication

9 (7) 'Index' means the database, maintained by the bureau, of criminal  
10 records checks that have been conducted on applicants for employment with and  
11 employees of qualified entities or ElderChoices providers;

12 (8) 'Licensing agency' means the government agency charged with  
13 licensing the operator or qualified entity to provide care to the elderly or  
14 to individuals with disabilities or both

15 (9) 'National criminal history check' means a review of national  
16 criminal records maintained by the Federal Bureau of Investigation based on  
17 fingerprint identification or other positive identification methods

18 (10) 'Operator' means a person responsible for signing an application  
19 for initial or renewal license to operate a qualified entity

20 (11) 'Qualified entity' means a long term care facility as defined by  
21 §20-10-101 or § 20-10-702, a home health care service as defined by § 20-10-  
22 801, ~~and~~ a hospice service as defined by § 20-7-117, any individual or entity  
23 who provides services in the home of individuals and who is designated by the  
24 Division of Aging and Adult Services of the Department of Human Services as an  
25 ElderChoices provider, and any employment agency who hires or procures, on  
26 behalf of another entity or organization, individuals who provide services in  
27 the home and are designated by the Division of Aging and Adult Services as an  
28 ElderChoices provider whether or not the entity has applied for or possesses  
29 any license or certification necessary for operation. In no event shall an  
30 individual or entity hired and paid for by the recipient be considered a  
31 qualified entity, or be subject to the provisions of this subchapter unless  
32 the individual or entity is otherwise enrolled as a Medicaid provider of  
33 ElderChoices services;

34 (12) 'Report' means a statement of the criminal history of an  
35 applicant, employee, ElderChoices provider, or operator issued by the bureau

36 (13) 'Requesting agency' means the government agency charged with

1 certifying the individual or qualified entity to provide care to the elderly  
2 or to individuals with disabilities or both; and

3 ~~(13)~~(14) 'State criminal history check' means a review of state  
4 criminal records conducted by the bureau."

5  
6 SECTION 2. Arkansas Code 20-33-203 is amended to read as follows:

7 "20-33-203. Mandatory Criminal records checks for applicants,  
8 ElderChoices providers, and employees.

9 (a) When a person applies for a position as an employee of a qualified  
10 entity and if the qualified entity intends to make an offer of employment to  
11 the applicant, the applicant shall complete a criminal history check form  
12 obtained from the qualified entity and shall submit the form to the qualified  
13 entity as part of the application process to be an employee. If the qualified  
14 entity intends to make an offer of employment to the applicant, the qualified  
15 entity shall, within five (5) business days of such decision, forward the  
16 criminal history check form to the bureau accompanied by appropriate payment  
17 and request the bureau to review the bureau's index of criminal history checks  
18 on persons caring for the elderly or individuals with disabilities. Prior to  
19 an ElderChoices provider providing care, the ElderChoices provider shall  
20 complete a criminal history check form obtained from the Division of Aging and  
21 Adult Services, and shall submit the completed form with appropriate payment  
22 to the bureau and request the bureau to review the bureau's index of criminal  
23 history checks on persons caring for the elderly or individuals with  
24 disabilities. Within three (3) business days of the receipt of a request to  
25 review the index, the bureau shall notify the qualified entity and the  
26 Division of Aging and Adult Services, if the index contains any criminal  
27 history records on the applicant or ElderChoices provider. A qualified entity  
28 may make an offer of temporary employment to an applicant, pending receipt of  
29 notification from the bureau after checking the database of the licensing  
30 agency.

31 (1) If no criminal history records regarding the applicant are  
32 found in the index, then the qualified entity may continue to temporarily  
33 employ the applicant, while the bureau completes a criminal history check and  
34 the licensing agency determines whether the applicant is disqualified from  
35 employment with the qualified entity.

36 (2) If a criminal history record regarding the applicant is found

1 in the bureau's index, then the applicant is temporarily disqualified from  
2 employment until the licensing agency issues a determination. If the  
3 licensing agency issues a determination that the applicant is not qualified,  
4 then the qualified entity may temporarily employ the applicant while the  
5 bureau completes a criminal history check.

6 (b)(1) Except as provided in subsection (b)(2), the bureau shall conduct  
7 a state criminal history check and a national criminal history check on an  
8 applicant, ElderChoices provider, or an employee upon receiving a criminal  
9 history check request from a qualified entity or requesting agency or the  
10 Division of Aging and Adult Services.

11 (2) If the qualified entity, requesting agency or the Division of  
12 Aging and Adult Services, or ElderChoices provider can verify that the  
13 applicant or ElderChoices provider has been employed within the State of  
14 Arkansas to provide care to the elderly or individuals with disabilities or  
15 both within sixty (60) days before the application or request from the agency  
16 or the Division of Aging and Adult Services, or has lived continuously in the  
17 State of Arkansas for the past five (5) years, the bureau shall conduct only a  
18 state criminal history check on the applicant or ElderChoices provider.

19 (c) Upon completion of a criminal history check on an applicant, or  
20 ElderChoices provider, or employee, the bureau shall issue a report to the  
21 licensing or requesting agency of the qualified entity. The licensing agency  
22 shall determine whether the applicant or employee is disqualified from  
23 employment with the qualified entity, and forward its determination to the  
24 qualified entity. If the licensing agency determines that an applicant or  
25 employee is disqualified from employment then the qualified entity shall  
26 terminate the employment of the employee or shall deny employment to the  
27 applicant subject to the waiver provisions of ~~§ 20-33-105(d)~~ 20-10-205(d). If  
28 the requesting agency determines that the ElderChoices provider is  
29 disqualified from providing care, the requesting agency shall forward its  
30 determination to the ElderChoices provider and the ElderChoices provider shall  
31 be prohibited from providing care to the elderly or individuals with  
32 disabilities subject to the waiver provisions of § 20-33-205(d).

33 (d) Before making a temporary or permanent offer of employment, a  
34 qualified entity shall inform applicants and employees that continued  
35 employment is contingent upon the results of periodic criminal records checks  
36 and that the applicant or employee has the right to obtain a copy of the

1 report from the bureau.”

2  
3 SECTION 3. Arkansas Code Annotated § 20-33-205 (a)(3) is hereby amended  
4 to read as follows:

5 “(a)(3)(A) A qualified entity shall not knowingly employ a person who  
6 has been found guilty or has pled guilty or nolo contendere to any of the  
7 offenses listed in subsection (b) by any court in the State of Arkansas or any  
8 similar offense by a court in another state or of any similar offense by a  
9 federal court.

10 (B) Except as provided in subsection (c):

11 (1) A licensing agency shall issue a forty-five (45)  
12 day provisional license to a qualified entity whose operator has been found  
13 guilty or pled guilty or nolo contendere to any of the offenses listed in  
14 subsection (b);

15 (2) A licensing agency shall issue a determination  
16 that a person is disqualified from employment with a qualified entity if the  
17 person has been found guilty or pled guilty or nolo contendere to any of the  
18 offenses listed in subsection (b), and a requesting agency shall issue a  
19 determination that a person or ElderChoices provider is disqualified from  
20 providing care to the elderly or to an individual with a disability or both if  
21 the person or ElderChoices provider has been found guilty or pled guilty or  
22 nolo contendere to any of the offenses listed in subsection (b).”

23  
24 SECTION 4. Arkansas Code 20-33-205(d) is amended to read as follows:

25 “(d) The provisions of this section may be waived by the licensing or  
26 requesting agency upon request by the person who is the subject of the  
27 criminal history check. Factors to be considered before granting a waiver  
28 shall include but not be limited to:

- 29 (1) The age at which the crime was committed;  
30 (2) The circumstances surrounding the crime;  
31 (3) The length of time since the adjudication of guilt;  
32 (4) The person’s subsequent work history;  
33 (5) The person’s employment references;  
34 (6) The person’s character references;  
35 (7) The nurse aid registry records; and  
36 (8) Any other evidence demonstrated that the person does not pose

1 a threat to the health or safety of persons to be cared for.

2 (e) Because of the serious nature of the offenses, and the close  
3 relationship to the type of work that is to be performed, the following  
4 offenses may not be waived by the licensing agency:

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

6 (2) Murder in the first degree and second degree, as prohibited  
7 in § 5-10-102 and 5-10-103;

8 (3) Kidnapping as prohibited in § 5-11-102;

9 (4) Rape and carnal abuse in the first degree, second degree, and  
10 third degree, as prohibited in § § 5-14-103 -- 5-14-106;

11 (5) Sexual abuse in the first and second degree, as prohibited in  
12 § 5-14-108 and 5-14-109;

13 (6) Endangering the welfare of an incompetent person in the first  
14 degree, as prohibited in § 5-27-203;

15 (7) Felony adult abuse, as prohibited by § 5-28-103; and

16 (8) Arson, as prohibited in § 5-38-301."  
17

18 SECTION 5. Arkansas Code 20-33-205(e) is amended to read as follows:

19 "(e)(1) A qualified entity shall not be disqualified from licensure  
20 when the operator has been found guilty of or has pled guilty or nolo  
21 contendere to a misdemeanor if the offense did not involve exploitation of an  
22 adult, abuse of a person, neglect of a person, theft, or sexual contact.

23 (2) An applicant, ElderChoices provider, or employee shall not be  
24 disqualified from permanent employment or providing care to the elderly or an  
25 individual with a disability or both when the applicant, ElderChoices  
26 provider, or employee has been found guilty of or has pled guilty or nolo  
27 contendere to a misdemeanor if the offense did not involve exploitation of an  
28 adult, abuse of a person, neglect of a person, theft, or sexual contact."  
29

30 SECTION 6. Arkansas Code 20-33-208 is amended to read as follows:

31 "20-33-208. Regulations - Remedies for failure to comply - Challenges to  
32 agency determinations.

33 (a) The Arkansas Crime Information Center, the bureau, and each  
34 licensing or requesting agency shall cooperate to prepare forms and promulgate  
35 consistent regulations as necessary to implement this subchapter.

36 (b) Each licensing agency shall establish remedies to be imposed on the

1 qualified entities licensed by the respective agencies for failure to comply  
2 with this subchapter.

3 (c) Each licensing or requesting agency shall establish a procedure for  
4 operators, applicants, employees, ElderChoices providers, and qualified  
5 entities to challenge determinations.

6 (d) A person may challenge the completeness or accuracy of criminal  
7 history information pursuant to § 12-12-1013."

8  
9 SECTION 7. Arkansas Code 20-33-209 is amended to read as follows:

10 "20-33-209. Confidentiality.

11 All reports obtained under this subchapter are confidential and are  
12 restricted to the exclusive use of the Arkansas Crime Information Center, the  
13 bureau, the licensing or requesting agency, and the person who is the subject  
14 of the report. The information contained in reports shall not be released or  
15 otherwise disclosed to any other person or agency except by court order and  
16 are specifically exempt from disclosure under the Arkansas Freedom of  
17 Information Act, § 25-19-101, et seq., except that the licensing or requesting  
18 agency is authorized and directed to furnish determinations to qualified  
19 entities or ElderChoices providers."

20  
21 SECTION 8. Arkansas Code 20-33-212 is amended as follows:

22 "20-33-212. Effective date - Criminal history checks for incumbent  
23 operators and employees.

24 (a) Operators licensed, ElderChoices providers seeking to provide care  
25 and employees hired on and after October 1, 1997 shall apply for criminal  
26 records checks.

27 (b) Criminal history checks shall be obtained for all operators,  
28 ElderChoices providers and employees by October 1, 2000 and each licensing or  
29 requesting agency shall promulgate a rule that prescribes how criminal history  
30 checks for incumbent operators, ElderChoices providers and employees will be  
31 phased-in during the period prior to October 1, 2000. The rule shall require:

32 (1) Operators to apply for criminal history checks in conjunction  
33 with the deadline for the operator to seek renewal of the qualified entity's  
34 license from the licensing agency; ~~and~~

35 (2) Incumbent employees to apply for criminal history checks in  
36 the same manner as applicants for employment in conjunction with the

1 employee's anniversary of employment or any time before that date; ~~and~~  
 2 (3) ElderChoices providers to apply for criminal history checks  
 3 prior to providing care."  
 4

5 SECTION 9. Arkansas Code 21-15-101 is hereby amended as follows:

6 "21-15-101. Definitions.

7 As used in this subchapter:

8 (1) 'Applicant' means a person applying for employment with a state  
 9 agency;

10 ~~(1)(2)~~ 'Child' means a minor under the age of eighteen (18);

11 (3) 'Designated position' means a position in which a person is  
 12 employed by a state agency to provide care, supervision, treatment, or any  
 13 other services to the elderly, to individuals with mental or physical  
 14 disabilities, individuals with mental illnesses, or to children, who reside in  
 15 any state operated facility, or a position in which the applicant or employee  
 16 will have direct contact with a child;

17 ~~(2)(4)~~ 'Direct contact' means the ability to interview, question,  
 18 examine, interact with, talk with, or communicate with a child without being  
 19 in the physical presence of a person other than the child; ~~and~~

20 (5) 'Elderly' means persons aged sixty-five (65) or older; and

21 ~~(3)(6)~~ 'State agency' means any agency, authority, board, bureau,  
 22 commission, council, department, office, or officer of the state receiving an  
 23 appropriation by the General Assembly. The term shall not include  
 24 municipalities, townships, counties, school districts, and state-supported  
 25 institutions of higher learning."  
 26

27 SECTION 10. Arkansas Code 21-15-102(a) is amended to read as follows:

28 "(a) ~~When a person applies for employment with a state agency in a~~  
 29 ~~designated position that includes, as part of the job description, direct~~  
 30 ~~contact with a child and if the state agency intends to make an offer of~~  
 31 ~~employment to the applicant, the applicant shall complete a criminal history~~  
 32 ~~check form obtained from the state agency and shall submit the form to the~~  
 33 ~~state agency as part of the application process. If the state agency intends~~  
 34 ~~to make an offer of employment to the applicant, the state agency shall,~~  
 35 ~~within five (5) days of such decision, forward the criminal history check form~~  
 36 ~~to the Identification Bureau of the Department of Arkansas State Police and~~

1 request the bureau to review the bureau's database of criminal history checks  
2 on state agency employees ~~having direct contact with a child in designated~~  
3 positions. Within three (3) days of the receipt of a request to review the  
4 database, the bureau shall notify the state agency if the database contains  
5 any criminal history records on the applicant.

6 (1) If no criminal history records regarding the applicant are  
7 found in the database, then the state agency may make an offer of temporary  
8 employment to the applicant while the bureau completes a criminal history  
9 check and the state agency determines whether the applicant is disqualified  
10 from employment under subsection (f) of this section.

11 (2) If a criminal history record regarding the applicant is found  
12 in the bureau's database, then the applicant is temporarily disqualified from  
13 employment until the state agency determines whether the applicant is  
14 disqualified from employment under subsection (f) of this section. If the  
15 state agency determines that the applicant is not disqualified, then the state  
16 agency may continue to temporarily employ the applicant while the bureau  
17 completes a criminal history check."

18  
19 SECTION 11. Arkansas Code 21-15-103 (a)(1) and (a)(2) are amended to  
20 read as follows:

21 "(a)(1) State agencies shall ensure that all employees in designated  
22 positions ~~that include, as part of the job description direct contact with a~~  
23 ~~child~~ will have applied for criminal history checks by October 1, 2000 and  
24 shall adopt a rule that prescribes how criminal background checks on incumbent  
25 employees will be phased in over the period of time prior to July 1, 2000.  
26 The rule shall require incumbent employees to apply for criminal history  
27 checks in conjunction with the employee's anniversary of employment or any  
28 time before that date.

29 (2) In accordance with subdivision (a)(1) of this section, each  
30 employee of a state agency in a designated position ~~that includes, as part of~~  
31 ~~the job description, direct contact with a child~~ shall complete a criminal  
32 history check form obtained from the state agency and shall submit the form to  
33 the state agency. The state agency shall forward the criminal history check  
34 form to the Identification Bureau of the Department of Arkansas State Police.  
35 The state agency shall pay any fee associated with the criminal history check  
36 on behalf of the employee."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

SECTION 12. Arkansas Code 21-15-103(b)(2) is amended to read as follows:

"(b)(2) If the state agency can verify that the applicant has been employed by a state agency in a designated position ~~that includes, as part of the job description, direct contact with a child~~ within sixty (60) days before the application or has lived continuously in the State of Arkansas for the past five (5) years, the bureau shall conduct only a state criminal history check on the applicant."

SECTION 13. Arkansas Code 21-15-103(f) is amended to read as follows:

"(f) A state agency shall discharge from employment in a designated position ~~that includes, as part of the job description, direct contact with a child or children~~ any person who has pleaded guilty or nolo contendere to, or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a federal court in another state or of any similar offense by a federal court, but only after an opportunity for a hearing conducted in accordance with the Administrative Act, § 25-15-201 et seq.:

- (1) Capital murder, as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery in the first degree, as prohibited in § 5-13-201;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited

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

1 3-301, and 5-3-401, to commit any of the offenses listed in this subsection.”

2  
3 SECTION 14. Arkansas Code 21-15-104 is amended to read as follows:

4 “(a) The provisions of subsection (f) of § 21-15-102 and subsection (f)  
5 of § 21-15-103 may be waived by the director of a state agency upon the  
6 request of:

7 (1) A supervisor or other managerial employee in the state  
8 agency;

9 (2) An affected applicant for employment; or

10 (3) The person subject to discharge.

11 (b) Circumstances for which a waiver may be granted shall include, but  
12 not be limited to, the following:

13 (1) The age at which the crime was committed;

14 (2) The circumstances surrounding the crime;

15 (3) The length of time since the crime;

16 (4) Subsequent work history;

17 (5) Employment references;

18 (6) Character references; and

19 (7) Other evidence demonstrating that the applicant or employee  
20 does not pose a threat to the health or safety of children or other clients of  
21 the state agency.

22 (c) Because of the serious nature of the offenses, and the close  
23 relationship to the type of work that is to be performed, the following  
24 offenses may not be waived by the state agency:

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

26 (2) Murder in the first degree and second degree, as prohibited  
27 in §§ 5-10-102 and 5-10-103;

28 (3) Kidnapping, as prohibited in § 5-11-102;

29 (4) Rape and carnal abuse in the first degree, second degree, and  
30 third degree, as prohibited in §§ 5-14-103 and 5-14-106;

31 (5) Sexual abuse in the first degree and second degree, as  
32 prohibited in §§ 5-14-108 and 5-14-109;

33 (6) Sexual solicitation of a child, as prohibited in §§ 5-26-303  
34 – 5-26-306;

35 (7) Endangering the welfare of incompetent person in the first  
36 degree, as prohibited in § 5-27-203;

