

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 83rd General Assembly
3 Regular Session, 2001
4

A Bill

Act 1211 of 2001
HOUSE BILL 1919

5 By: Representative Dees
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE CHILD WELFARE AGENCY LICENSING
10 ACT; AND FOR OTHER PURPOSES.
11

Subtitle

14 AN ACT TO AMEND THE CHILD WELFARE AGENCY
15 LICENSING ACT.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 9-28-407(h), concerning licenses required and
21 issued by the Child Welfare Agency Review Board, is amended to read as
22 follows:

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

28 ~~(1)(A)~~ To the director as required by regulation;

29 ~~(2)(B)~~ For adoptive placements, As as provided by the
30 Revised Uniform Adoption Act, § 9-9-201 et seq.; ~~or~~

31 ~~(3)(C)~~ To multidisciplinary teams under § 12-12-502(b); ~~and~~

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

33 (ii) However, the licensee or state agency may
34 redact information from the record such as the name or address of foster
35 parents or providers when it is in the best interest of the child;

36 (E) To the child;

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

4 (ii) Health care providers include doctors, nurses,
 5 emergency medical technicians, counselors, therapists, mental health
 6 professionals, and dentists;

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

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

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

14 (I)(i) To the Child Welfare Agency Review Board.

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

19 (J) To the Division of Children and Family Services,
 20 including child welfare agency licensing specialists;

21 (K) Any audit or similar activity conducted in connection
 22 with the administration of any such plan or program by any governmental
 23 agency which is authorized by law to conduct such audit or activity;

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

26 (M) To the Attorney Ad Litem for the child;

27 (N) Law enforcement or the prosecuting attorney at the
 28 discretion of the licensee or state agency and if deemed to be in the best
 29 interest of the child;

30 (O) To Juvenile Court, as provided for in the Arkansas
 31 Juvenile Code;

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

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

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

4 (S)(i) To individual federal and state representatives and
5 senators with no redisclosure of information.

6 (ii) No disclosure shall be made to any committee or
7 legislative body of any information which identifies by name or address any
8 recipient of services.

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

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

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

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

16 (D) To the Child Welfare Agency Review Board;

17 (E) To the Division of Children and Family Services,
18 including child welfare agency licensing specialists; or

19 (F) To law enforcement or the prosecuting attorney, upon
20 request.

21 (3)(A) Any person or agency to whom disclosure is made shall not
22 disclose to any other person reports or other information obtained pursuant
23 to this subsection.

24 (B) Any person disclosing information in violation of this
25 subsection shall be guilty of a Class C misdemeanor.

26
27 SECTION 2. Arkansas Code is amended to read as follows:

28 9-28-409. Criminal record and child maltreatment checks.

29 (a)(1) The following persons in a child welfare agency shall be
30 checked with the ~~Arkansas~~ Child Maltreatment Central Registry in his state of
31 residence and any state of residence in which the person has lived for the
32 past six (6) years, and in the person's state of employment, if different,
33 for reports of child maltreatment in compliance with policy and procedures
34 promulgated by the Child Welfare Agency Review Board:

35 (A) Employees having direct and unsupervised contact with
36 children;

1 (B) Volunteers having direct and unsupervised contact with
2 children;

3 (C) Foster parents and all household members age ten (10)
4 years and older;

5 (D) Adoptive parents ~~residing in Arkansas~~ and all
6 household members age ten (10) years and older;

7 (E) Owners having direct and unsupervised contact with
8 children;

9 (F) Members of the agency's board of directors having
10 direct and unsupervised contact with children.

11 (2) The Child Welfare Agency Review Board shall have the
12 authority to deny a license or church-operated exemption to any applicant
13 found to have any record of founded child maltreatment in the official record
14 of the Arkansas Child Maltreatment Central Registry.

15 (3) Any person required to be checked under this section who is
16 found to have any record of child maltreatment in the official record of the
17 Arkansas Child Maltreatment Central Registry shall be reviewed by the owner
18 or operator of the facility in consultation with the board to determine
19 appropriate corrective action measures, which would indicate, but are not
20 limited to training, probationary employment, or nonselection for employment.
21 The Child Welfare Agency Review Board shall also have the authority to deny a
22 license or church-operated exemption to an applicant who continues to employ
23 a person with any record of founded child maltreatment.

24 (4) All persons required to be checked with the Arkansas Child
25 Maltreatment Central Registry under this section shall repeat the check every
26 two (2) years, except that adoptive parents who reside in Arkansas shall
27 repeat the check every year pending court issuance of a final decree of
28 adoption, at which point repeat checks shall no longer be required.

29 (b)(1) The following persons in a child welfare agency who have lived
30 in Arkansas continuously for six (6) or more years shall be checked with the
31 Identification Bureau of the Arkansas State Police for convictions of the
32 offenses listed in this subchapter, in compliance with policy and procedures
33 promulgated by the Child Welfare Agency Review Board:

34 (A) Employees having direct and unsupervised contact with
35 children;

36 (B) Volunteers having direct and unsupervised contact with

1 children;

2 (C) Foster parents and all household members age sixteen
3 (16) years and older;

4 (D) Owners having direct and unsupervised contact with
5 children;

6 (E) Members of the agency's board of directors having
7 direct and unsupervised contact with children.

8 (2) The owner or operator of a child welfare agency shall
9 maintain on file, subject to inspection by the board, evidence that Arkansas
10 State Police criminal records checks have been initiated on all persons
11 required to be checked, and the results of the checks. Failure to maintain
12 that evidence on file will be prima facie grounds to revoke the license or
13 church-operated exemption of the owner or operator of the child welfare
14 agency.

15 (3) All persons required to be checked with the Arkansas State
16 Police under this section shall repeat the check every five (5) years, except
17 that adoptive parents shall not repeat the check after court issuance of a
18 final decree of adoption in the adoption case for which the check was
19 obtained.

20 (4) Adoptive parents shall complete background checks as
21 required by law.

22 (c)(1) The following persons in a child welfare agency who have not
23 lived in Arkansas continuously for the past six (6) years shall be checked
24 with the Federal Bureau of Investigation for convictions of the offenses
25 listed in this subchapter, in compliance with federal law and regulations and
26 with policy and procedures promulgated by the Child Welfare Agency Review
27 Board:

28 (A) Employees having direct and unsupervised contact with
29 children;

30 (B) Volunteers having direct and unsupervised contact with
31 children;

32 (C) Foster parents and all family members age sixteen (16)
33 years and older;

34 (D) Owners having direct and unsupervised contact with
35 children;

36 (E) Members of the agency's board of directors having

1 direct and unsupervised contact with children.

2 (2) The owner or operator of a child welfare agency shall
 3 maintain on file, subject to inspection by the board, evidence that the
 4 Federal Bureau of Investigation's criminal records checks have been initiated
 5 on all persons required to be checked, and the results of the checks. Failure
 6 to maintain that evidence on file will be prima facie grounds to revoke the
 7 license or church-operated exemption of the owner or operator of the child
 8 welfare agency.

9 (d)(1) Each person required to have a criminal records check under
 10 this subchapter shall complete a criminal records check form developed by the
 11 Department of Human Services and shall sign such form under oath before a
 12 notary public which contains the following:

13 (A) Certification that the subject of the check consents
 14 to the completion of the check;

15 (B) Certification that the subject of the check has not
 16 been convicted of a crime and, if the subject of the check has been convicted
 17 of a crime, contains a description of the crime and the particulars of the
 18 conviction;

19 (C) Notification that the subject of the check may
 20 challenge the accuracy and completeness of any information in any such report
 21 and obtain a prompt determination as to the validity of such challenge before
 22 a final determination is made by the Child Welfare Agency Review Board with
 23 respect to their employment status or licensing status;

24 (D) Notification that the subject of the check may be
 25 denied a license or exemption to operate a child welfare agency or may be
 26 denied unsupervised access to children in the care of a child welfare agency
 27 due to information obtained by the check which indicates that the subject of
 28 the check has been convicted of, or is under pending indictment for, a crime
 29 listed in this subchapter;

30 (E) Notification that any background check and the results
 31 thereof shall be handled in accordance with the requirements of P.L. 92-544.

32 (2) The owner or operator of the child welfare agency shall
 33 submit the criminal records check form to the Identification Bureau of the
 34 Department of Arkansas State Police for processing within ten (10) days of
 35 hiring the employee, who shall remain under conditional employment until the
 36 Arkansas Child Abuse Central Registry check and criminal records checks

1 required under this subchapter are completed.

2 (3) Nothing in this section shall be construed to prevent the
 3 board from denying a license or exemption to an owner or preventing an
 4 operator or employee in a child welfare agency from having unsupervised
 5 access to children by reason of the pending appeal of a criminal conviction
 6 or child maltreatment determination.

7 (4) In the event a legible set of fingerprints, as determined by
 8 the Department of the Arkansas State Police and the Federal Bureau of
 9 Investigation, cannot be obtained after a minimum of three (3) attempts by
 10 qualified law enforcement personnel, the board shall determine eligibility
 11 based upon a name check by the Department of Arkansas State Police and the
 12 Federal Bureau of Investigation.

13 (5)(A) Owner/operator liability: An owner or operator of a child
 14 welfare agency shall not be liable during a conditional period of service for
 15 hiring any person required to have a background check pursuant to this
 16 subchapter who may be subject to a charge of false swearing upon completion
 17 of central registry and criminal records checks.

18 (B)(i) Pursuant to this subchapter, false swearing shall
 19 occur when a person, while under oath, provides false information or omits
 20 information that the person knew or reasonably should have known was
 21 material.

22 (ii) Lack of knowledge that information is material
 23 is not a defense to a charge of false swearing.

24 (C) For purposes of this subchapter, false swearing is a
 25 Class A misdemeanor.

26 (e)(1) Except as provided in subsection (d)(2) of this section, no
 27 person who is required to have a criminal check under (b)(1) or (c)(1) shall
 28 be eligible to have direct and unsupervised contact with a child in the care
 29 of a child welfare agency if that person has pleaded guilty or nolo
 30 contendere or has been found guilty of any of the following offenses by any
 31 court in the State of Arkansas or of any similar offense by a court in
 32 another state or of any similar offense by a federal court:

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

34 (B) Murder in the first and second degrees as prohibited
 35 in §§ 5-10-102 and 5-10-103;

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

- 1 (D) Negligent homicide as prohibited in § 5-10-105;
- 2 (E) Kidnapping as prohibited in § 5-11-102;
- 3 (F) False imprisonment in the first and second degrees as
- 4 prohibited in §§ 5-11-103 and 5-11-104;
- 5 (G) Permanent detention or restraint as prohibited in § 5-
- 6 11-106;
- 7 (H) Battery in the first, second, and third degrees as
- 8 prohibited in §§ 5-13-201, 5-13-202 and 5-13-203;
- 9 (I) Aggravated assault as prohibited in § 5-13-204;
- 10 (J) Assault in the first and second degrees as prohibited
- 11 in §§ 5-13-205 and 5-13-206;
- 12 (K) Terroristic threatening in the first and second
- 13 degrees as prohibited in § 5-13-301(a) and (b);
- 14 (L) Any sexual offense as prohibited in § 5-14-101 et
- 15 seq.;
- 16 (M) Permitting abuse of a child as prohibited in § 5-27-
- 17 221;
- 18 (N) Endangering the welfare of a minor in the first and
- 19 second degrees as prohibited in §§ 5-27-203 and 5-27-204;
- 20 (O) Contributing to the delinquency of a minor as
- 21 prohibited in § 5-27-205;
- 22 (P) Engaging children in sexually explicit conduct for use
- 23 in visual or print medium, transportation of minors for prohibited sexual
- 24 conduct, use of a child or consent to use of a child in sexual performance,
- 25 and producing, directing, or promoting sexual performance by a child, as
- 26 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 27 (Q) Incest as prohibited in § 5-26-202;
- 28 (R) Interference with visitation as prohibited in § 5-26-
- 29 501;
- 30 (S) Interference with custody as prohibited in § 5-26-502;
- 31 (T) Engaging in conduct with respect to controlled
- 32 substances as prohibited in § 5-64-401;
- 33 (U) Distribution to minors as prohibited in § 5-64-406;
- 34 (V) Public display of obscenity as prohibited in § 5-68-
- 35 205;
- 36 (W) Prostitution as prohibited in § 5-70-102;

1 (X) Promotion of prostitution in the first, second, and
 2 third degrees as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

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

6 (Z) Any felony or any misdemeanor involving violence,
 7 threatened violence, or moral turpitude;

8 (AA) Any former or future law of this or any other state
 9 or of the federal government which is substantially equivalent to one of the
 10 aforementioned offenses;

11 (2)(A) Any person who is required to have a criminal check under
 12 (b)(1) or (c)(1) who pleads ~~pleading~~ guilty or nolo contendere or is found
 13 guilty of any of the offenses listed in subdivision (e)(1) of this section
 14 shall be absolutely disqualified to be an owner, operator, ~~volunteer, foster~~
 15 parent, adoptive parent, member of an agency's board of directors, or
 16 employee in a child welfare agency during the period of their confinement,
 17 probation or parole supervision.

18 (B) Any person who is required to have a criminal check
 19 under (b)(1) or (c)(1) who pleads ~~pleading~~ guilty or nolo contendere or is
 20 found guilty of any of the offenses listed in subdivision (e)(1) of this
 21 section shall be presumed to be disqualified to be an owner, operator,
 22 ~~volunteer, foster parent, adoptive parent, member of an agency's board of~~
 23 ~~directors,~~ or employee in a child welfare agency after the completion of
 24 their term of confinement, probation or parole supervision. This presumption
 25 can be rebutted in the following manner:

26 (i) ~~The applicant to own, operate or be an employee~~
 27 must petition the Child Welfare Agency Review Board to make a determination
 28 that the applicant does not pose a risk of harm to any person served by the
 29 facility and is therefore qualified to serve in a child welfare agency. The
 30 applicant shall bear the burden of making such a showing.

31 (ii) The board, in its discretion, may permit an
 32 applicant to serve own, operate or be an employee in a child welfare agency
 33 ~~is qualified to serve in a child welfare agency~~ notwithstanding having been
 34 convicted of an offense listed in this section, upon making a determination
 35 that the applicant does not pose a risk of harm to any person served by the
 36 facility. In making this determination, the board shall consider the

1 following factors:

- 2 (a) The nature and severity of the crime;
- 3 (b) The consequences of the crime;
- 4 (c) The number and frequency of crimes;
- 5 (d) The relation between the crime and the
- 6 health, safety, and welfare of persons served by a child welfare agency, such
- 7 as:

- 8 (1) The age and vulnerability of victims
- 9 of the crime;
- 10 (2) The harm suffered by the victim;
- 11 (3) The similarity between the victim
- 12 and persons served by a child welfare agency;
- 13 (e) The time elapsed without a repeat of the
- 14 same or similar event;
- 15 (f) Documentation of successful completion of
- 16 training or rehabilitation pertinent to the incident; and
- 17 (g) Any other information that bears on the
- 18 applicant's ability to care for children or any other relevant information.

19 (C) The board's decision to disqualify a person servi ng
 20 ~~from being an owner, operator, or employee~~ in a child welfare agency pursuant
 21 to this section shall constitute the final administrative agency action and
 22 shall not be subject to review.

23 (f)(1) No foster child in the custody of the Department of Human
 24 Services shall be placed in the home of any foster or adoptive parent if the
 25 criminal record check reveals a felony conviction for:

- 26 ~~(1)(A)~~ Child abuse or neglect;
- 27 ~~(2)(B)~~ Spousal abuse;
- 28 ~~(3)(C)~~ A crime against children, including child
- 29 pornography; or
- 30 ~~(4)(D)~~ A crime involving violence, including rape, sexual
- 31 assault, or homicide, but not including other physical assault or battery.

32 (2) No foster child in the custody of another state agency who
 33 is placed in Arkansas shall be placed in any home if the criminal record
 34 check reveals a felony conviction of an adult in the home for:

- 35 (A) Child abuse or neglect;
- 36 (B) Spousal abuse;

1 (C) A crime against children, including child pornography;
2 or

3 (D) A crime involving violence, including rape, sexual
4 assault, or homicide, but not including other physical assault or battery.

5 (g)(1) No foster child in the custody of the Department of Human
6 Services shall be placed in the home of any foster or adoptive parent if the
7 criminal record check reveals a felony conviction for physical assault,
8 battery, or a drug-related offense if the offense was committed within the
9 past five years.

10 (2) No foster child in the custody of another state agency who
11 is placed in Arkansas shall be placed in any home if the criminal record
12 check reveals a felony conviction of any adult in the home for physical
13 assault, battery, or a drug-related offense, if the offense was committed
14 within the past five (5) years.

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17 APPROVED: 3/30/2001
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