

## HOUSE AMENDMENT 2 TO hb1484.

deleting sections 1 through 11 of the bill and substituting the following:

"SECTION 1. As used in this act,

(1) State agency means any agency, authority, board, bureau, commission, council, department, office, or officer of the State receiving an appropriation by the General Assembly. The term shall not include municipalities, townships, counties, school districts, and state-supported institutions of higher education;

(2) Child means a minor under the age of eighteen (18); and

(3) Direct contact means the ability to interview, question, examine, interact with, talk with, or communicate with a child without being in the physical presence of a person other than the child.

SECTION 2. (a) When a person applies for employment with a state agency in a position that includes, as part of the job description, direct contact with a child and if the state agency intends to make an offer of employment to the applicant, the applicant shall complete a criminal history check form obtained from the state agency and shall submit the form to the state agency as part of the application process. If the state agency intends to make an offer of employment to the applicant, the state agency shall, within five (5) days of such decision, forward the criminal history check form to the Identification Bureau of the Department of Arkansas State Police and request the Bureau to review the Bureau s database of criminal history checks on state agency employees having direct contact with a child. The state agency shall pay any fee associated with the criminal history check on behalf of the applicant. Within three (3) days of the receipt of a request to review the database, the Bureau shall notify the state agency if the database contains any criminal history records on the applicant.

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

(2) If a criminal history record regarding the applicant is found in the Bureau s database, then the applicant is temporarily disqualified from employment until the state agency determines whether the applicant is disqualified from employment under subsection (f) of this section. If the state agency determines that the applicant is not disqualified, then the state agency may continue to temporarily employ the applicant while the Bureau completes a criminal history check.

(b) (1) Except as provided in subsection (b) (2), the Bureau shall conduct a state criminal history check and a national criminal history check on an applicant upon

receiving a criminal history check request from a state agency.

(2) If the state agency can verify that the applicant has been employed by a state agency in a 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.

(c) Upon completion of a criminal history check on an applicant, the Bureau shall issue a report to the state agency. The state agency shall determine whether the applicant is disqualified from employment under subsection (f) of this section, and if the state agency determines that an applicant is disqualified from employment, then the state agency shall deny employment to the applicant.

(d) When a national criminal history check is required under this section, the criminal history check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(e) Before making a temporary or permanent offer of employment, a state agency shall inform applicants that continued employment is contingent upon the results of a criminal history check and that the applicant has the right to obtain a copy of the report of the person s criminal history from the Bureau.

(f) No person shall be eligible for employment with a state agency in a position that includes, as part of the job description, direct contact with a child or children if that person 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 court in another state or of any similar offense by a federal court:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. (a) (1) State agencies shall ensure that all employees in positions that include, as part of the job description, direct contact with a child have applied for criminal history checks by October 1, 2000 and shall adopt a rule that prescribes how criminal background checks on incumbent employees will be phased-in over the period of

time prior to July 1, 2000. The rule shall require incumbent employees to apply for criminal history checks in conjunction with the employee s anniversary of employment or any time before that date.

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

(b) (1) Except as provided in subsection (b) (2), the Bureau shall conduct a state criminal history check and a national criminal history check on an applicant upon receiving a criminal history check request from a state agency.

(2) If the state agency can verify that the applicant has been employed by a state agency in a 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.

(c) Upon completion of a criminal history check on an employee, the Bureau shall issue a report to the state agency. The state agency shall determine whether the employee is disqualified from employment under subsection (f) of this section, and if the state agency determines that an employee is disqualified from employment, then the state agency shall discharge the employee.

(d) When a national criminal history check is required under this section, The criminal history check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(e) A state agency shall inform all employees in positions that include, as part of the job description, direct contact with a child, that continued employment is contingent upon the results of a criminal history check and that the employee has the right to obtain a copy of the report from the Bureau.

(f) A state agency shall discharge from employment in a 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 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 Procedures Act, A.C.A. 25-15-201, et seq.:

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

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

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

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

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

(6) False imprisonment in the first degree, as prohibited in A.C.A.

§ 5-11-103;

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

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

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

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

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

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

(13) Terroristic threatening in the first degree, as prohibited in A.C.A.

§ 5-13-301;

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

(15) Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-108 and 5-14-109;

(16) Sexual solicitation of a child, as prohibited in A.C.A. § 5-14-110;

(17) Violation of a minor in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;

(18) Incest, as prohibited in A.C.A § 5-26-202;

(19) Offenses against the family, as prohibited in A.C.A. §§ 5-26-303 - 5-26-306

(20) Endangering the welfare of incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;

(21) Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. § 5-27-203;

(22) Permitting child abuse, as prohibited in subdivisions (a) (1) and (a) (3) of A.C.A. § 5-27-221;

(23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;

(24) Felony adult abuse, as prohibited by A.C.A. § 5-28-103;

(25) Theft of property, as prohibited in A.C.A. § 5-36-103;

(26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;

(27) Arson, as prohibited in A.C.A. § 5-38-301;

(28) Burglary, as prohibited in A.C.A. § 5-39-201;

(29) Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. § 5-64-401;

(30) Promotion of prostitution in the first degree, as prohibited in A.C.A. § 5-70-104;

(31) Stalking, as prohibited in A.C.A. § 5-71-229; and

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

SECTION 4. (a) The provisions of subsection (f) of section 2 of this act and subsection (f) of section 3 of this act may be waived by the director of a state agency upon the request of:

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

(2) An affected applicant for employment; or

(3) The person subject to discharge.

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

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

(2) The circumstances surrounding the crime;

(3) The length of time since the crime;

(4) Subsequent work history;

(5) Employment references;

(6) Character references; and

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

SECTION 5. (a) Any information received by a state agency from the Identification Bureau of the Department of Arkansas State Police pursuant to this act shall not be available for examination except by the affected applicant for employment or his authorized representative, and no record, file, or document shall be removed from the custody of the department.

(b) Any information made available to the affected applicant for employment or the person who is subject to discharge shall be information pertaining to that applicant only.

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

SECTION 6. (a) All state agencies with a position that includes, as part of the job description, direct contact with a child, shall adopt the necessary rules and regulations to fully implement the provisions of this act.

(b) Each state agency shall maintain on file, subject to inspection by the Arkansas

Crime Information Center or the Bureau evidence that criminal history checks required by this act have been initiated on all applicants and employees.

SECTION 7. (a) After receipt of a request for a criminal history check, the Bureau shall make reasonable efforts to respond to requests for state criminal history checks within twenty (20) calendar days and to respond to requests for national criminal history checks within ten (10) calendar days after the receipt of a national criminal history check from the Federal Bureau of Investigation.

(b) Upon completion of a criminal history check, the Bureau shall forward all information obtained concerning the applicant or employee to the Arkansas Crime Information Center.

(c) The Bureau shall maintain a database of the results of criminal history checks on each applicant for employment with and each employee of a state agency in a position that includes, as part of the job description, direct contact with a child or children.

(d) The Bureau shall develop a form to be used for criminal history checks conducted under this act. The form shall require the notarized signature of the person who is the subject of the check.

SECTION 8. Any person who submits evidence of having maintained employment in the state of Arkansas for the past twelve (12) months and of successfully completing a criminal history check within the last twelve (12) months or in accordance with that person s professional license shall not be required to apply for a criminal history check under this act.

SECTION 9. Immunity.

Individuals and state agencies are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by this act."

AND

deleting line 26 of page 10 and substituting the following:

"health and safety shall become effective on October 1, 1997."