

Hall of the House of Representatives

83rd General Assembly - Regular Session, 2001

Amendment Form

Subtitle of House Bill No. 1912

"AN ACT TO REQUIRE ALL EMPLOYEES OF PROVIDERS OF CARE TO
DEVELOPMENTALLY DISABLED ADULTS TO PASS CRIMINAL RECORDS CHECKS."

Amendment No. 1 to House Bill No. 1912.

Amend House Bill No. 1912 as originally introduced:

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code Title 20, Chapter 48 is amended to add the following additional subchapter:

20-48-701. Definitions.

As used in this subchapter:

(1) "Bureau" means the Identification Bureau of the Arkansas State Police;

(2) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is reimbursed either directly or by arrangement with a government agency or receives reimbursement or payment either directly or indirectly from Medicaid;

(3) "Determination" means a service provider's determination that an applicant or employee is or is not disqualified from employment based on the criminal history of the applicant or employee;

(4) "Developmentally disabled person" means persons with a disability which:

(i) Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to mental retardation because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for mentally retarded persons; or

(iii) Is attributable to dyslexia resulting from a disability associated with mental retardation, cerebral palsy, epilepsy, or autism;

(5) "Employee" means any person who provides care to individuals with disabilities on behalf of, under the supervision of, or by arrangement with a service provider or any person employed by a service provider, including persons provided by or pursuant to contract with a private placement agency or contract staffing agency, unless the person is a family member or a volunteer or works in an administrative capacity and does not provide direct

patient care;

(6) "Index" means the database of completed background checks maintained by the Bureau that have been conducted on applicants for employment with and employees of a service provider;

(7) "Service provider" means the qualified entity responsible for direct care services to developmentally disabled persons;

(8) "Licensing agency" means the government agency charged with licensing the service provider to provide care to developmentally disabled persons;

(9) "National criminal history record check" means a review of criminal history records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(10) "Report" means a statement of the criminal history of an applicant or employee of the service provider issued by the Bureau;

(11) "State criminal history record check" means a review of state criminal history records conducted by the Bureau.

20-48-702. Mandatory criminal history records checks for applicants and employees of service providers.

(a)(1) When a person applies for a position as an employee of a service provider, the service provider shall require each applicant pursuant to this section to complete a criminal history record check form. Prior to employment the applicant must be fingerprinted. Such fingerprints shall be available for use by the Bureau and for transmittal to the FBI for a national criminal history record check. The information obtained from the national criminal history record check conducted pursuant to this section may be used by the service provider to determine the applicant's eligibility for employment.

(2) If the service provider intends to make an offer of employment to the applicant, the service provider shall within five (5) business days of that decision forward the criminal history record check form and the applicant's fingerprint card to the Bureau accompanied by appropriate payment and request the Bureau to review the Bureau's index of criminal history record checks on persons caring for individuals with disabilities.

(3) Within three (3) business days of the receipt of a request to review the index, the Bureau shall notify the service provider whether the index contains any criminal history records on the applicant.

(4)(A) A service provider may make an offer of temporary employment to an applicant, pending receipt of notification from the Bureau after conducting an index check.

(B) If no criminal history records regarding the applicant are found in the index, then the service provider may continue to temporarily employ the applicant while the Bureau completes a criminal history record check.

(C)(i) If a criminal history record regarding the applicant is found, then the applicant is temporarily disqualified from employment until the licensing agency issues a determination.

(ii) If the licensing agency issues a determination that the applicant is qualified, then the service provider may employ the applicant.

(b)(1) Except as provided in subdivision (b)(2) of this section, the Bureau shall conduct a state criminal history record check and a national

criminal history record check on an applicant or employee upon receiving a request from a service provider.

(2) If the service provider can verify that the applicant or employee has been employed within the State of Arkansas to provide care to individuals with disabilities within sixty (60) days before the application or request from the service provider, or has lived continuously in the State of Arkansas for the past five (5) years, the Bureau shall conduct only a state criminal history record check on the applicant or employee.

(3) If the service provider determines the need to utilize temporary employees provided by a private placement agency or other contract staffing company, it shall be the responsibility of the private placement agency or contract staffing agency to initiate the criminal background check as provided by this subchapter, before the placement of the person in the service provider's facility, and at all times the private placement agency or contract staffing agency must be able to document the pending background check or the final determination if requested by the service provider or licensing agency.

(c)(1) Upon completion of a criminal history record check on an applicant or employee, the Bureau shall issue a report to the entity making the request.

(2) The licensing agency shall determine whether the applicant or employee is disqualified from employment with the service provider and shall forward its determination to the service provider.

(3) If the licensing agency determines that an applicant or employee is disqualified from employment, then the service provider shall terminate the employment of the employee or shall deny employment to the applicant subject to the waiver provisions of § 20-48-704.

(d) Before making a temporary or permanent offer of employment, a service provider shall inform applicants and employees that continued employment is contingent upon the results of periodic criminal history record checks and that the applicant or employee has the right to obtain a copy of the report from the Bureau.

20-48-703. Evidence of records checks.

Each service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, or the licensing agency, evidence that criminal history record checks have been initiated on all applicants and employees and a copy of each determination is received from the licensing agency.

20-48-704. Provisional licenses - Disqualification from employment - Resubmission of applications - Waiver and exceptions - Denial or revocation - Penalties.

(a) Except as provided in subsection (c) of this section:

(1) A licensing agency shall issue a determination that a person is disqualified from employment with a service provider if the person has been found guilty or plead guilty or nolo contendere to any of the offenses listed in subsection (b) of this section; and

(2) A service provider shall not knowingly employ a person who has pleaded guilty or nolo contendere to or has been found guilty of any of the offenses listed in subsection (b) of this section 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.

- (b)(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 in § 5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- (15) Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
- (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;
- (18) Incest, as prohibited in § 5-26-202;
- (19) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (20) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (22) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, 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 § 5-27-303, § 5-27-304, § 5-27-305, § 5-27-402, and § 5-27-403;
- (24) Felony adult abuse, as prohibited by § 5-28-103;
- (25) Theft of property, as prohibited in § 5-36-103;
- (26) Theft by receiving, as prohibited in § 5-36-106;
- (27) Arson, as prohibited in § 5-38-301;
- (28) Felony violation of the Uniform Controlled Substances Act, as prohibited in § 5-64-401;
- (29) Burglary, as prohibited in § 5-39-201;
- (30) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;

(31) Stalking, as prohibited in § 5-71-229; and
(32) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in § 5-3-201, § 5-3-202, § 5-3-301, and § 5-3-401, to commit any of the offenses listed in this subsection.

(c)(1) The provisions of this section may be waived by the licensing or requesting agency upon request by the person who is the subject of the criminal history record check. Factors to be considered before granting a waiver shall include:

(A) The age at which the crime was committed;
(B) The circumstances surrounding the crime;
(C) The length of time since the adjudication of guilt;
(D) The person's subsequent work history;
(E) The person's employment references;
(F) The person's character references;
(G) The nurses aide registry records; and
(H) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.

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

(A) Capital murder, as prohibited in § 5-10-101;
(B) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
(C) Kidnapping, as prohibited in § 5-11-102;
(D) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
(E) Sexual abuse in the first and second degree, as prohibited in §§ 5-14-108 and 5-14-109;
(F) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
(G) Felony adult abuse, as prohibited by § 5-28-103; and
(H) Arson, as prohibited in § 5-38-301.

(3) An applicant or employee shall not be disqualified from permanent employment or providing care to an individual with a disability or both if the applicant or employee has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense did not involve exploitation of an adult, abuse of a person, neglect of a person, theft, or sexual contact.

(d) If a service provider fails or refuses to cooperate in obtaining criminal history record checks, those circumstances shall be grounds to deny or revoke the service provider's license or other operating authority.

(e) Any service provider violating this subchapter shall be guilty of a Class A misdemeanor for each violation.

20-48-705. Request for records check - Requirement.

(a) A request for a state criminal history records check on a person shall include a completed statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;

(2) Indicates whether the person has been found guilty of or

pled guilty or nolo contendere to a crime, and if so, includes a description of the crime and the particulars of the finding of guilt or the plea;

(3) Notifies the person that qualified entities may request reports of state criminal history record checks;

(4) Consents to disclosure of reports and determinations as provided by this subchapter;

(5) Notifies the person that prior to the completion of a state criminal history record check, the service provider may choose to deny the employee unsupervised access to a person to whom the service provider provides care;

(6) Informs the person how to object to the content of reports;
and

(7) Contains the notarized signature of the person who is the subject of the check.

(b) Each request for a national criminal history record check shall conform to the requirements for a state criminal history record check and shall include a complete set of fingerprints.

20-48-706. Duties of Identification Bureau and Licensing agencies.

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

(b)(1) The Bureau shall maintain an index of the results of each employee's, or applicant's criminal history record check.

(2) The Bureau shall furnish a report to the service provider upon completion of each criminal history record check and upon request of the licensing agency.

(c) The Bureau shall develop forms to be used for criminal history record checks conducted under this subchapter.

20-48-707. Regulations - Remedies for failure to comply - Challenges to agency determinations.

(a) The Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, and each licensing or requesting agency shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this subchapter.

(b) The licensing agency shall establish remedies to be imposed on a service provider licensed by the agency for failure to comply with this subchapter.

(c) The licensing or requesting agency shall establish a procedure for applicants and employees to challenge determinations.

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

20-48-708. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Arkansas State Police, the licensing agency, the service provider or requesting agency, and the person who is the subject of the report.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, which begins at § 25-19-101, except to the licensing agency, the service provider or requesting entity.

20-48-709. Immunity.

Individuals, the licensing agency, the service provider and a requesting entity 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 subchapter.

20-48-710. Exclusions - Licensed professionals - Completion of criminal history record check.

(a) This subchapter shall not apply to persons who render care subject to professional licenses obtained pursuant to:

(1) § 17-27-101 et seq., regarding licensed professional counselors;

(2) § 17-103-101 et seq., regarding social workers;

(3) § 17-82-101 et seq., regarding dentists;

(4) § 17-87-101 et seq., regarding nurses;

(5) § 17-88-101 et seq., regarding occupational therapists;

(6) § 17-92-101 et seq., regarding pharmacists;

(7) § 17-93-101 et seq., regarding physical therapists;

(8) § 17-95-201 et seq., regarding physicians and surgeons;

(9) § 17-96-101 et seq., regarding podiatrists;

(10) § 17-97-101 et seq., regarding psychologists and psychological examiners;

(11) § 17-100-101 et seq., regarding speech-language pathologists and audiologists; or

(12) § 20-10-401 et seq., regarding nursing home administrators.

(b)(1) The term "professional license" shall not include certification.

(2) Certified persons include certified nursing assistants and certified home health aides.

(c) 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 record 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 record check under this subchapter.

20-48-711. Effective date - Criminal history record checks for incumbent operators and employees.

(a) All applicants for jobs involving direct care services to developmentally disabled adults hired on and after the effective date of this subchapter, shall apply for criminal history record checks.

(b) Service providers who offer direct care services to developmentally disabled adults shall complete criminal history record checks on all employees by October 1, 2002."

The Amendment was read _____

By: Representative Rodgers

LH/JB

JMB287

Chief Clerk