

**Hall of the House of Representatives**  
85th General Assembly - Regular Session, 2005  
**Amendment Form**

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**Subtitle of House Bill No. 1466**

"AN ACT TO PROVIDE THAT RECORDS OF CERTAIN CRIMINAL OFFENSES OF  
PERSONS CARING FOR THE ELDERLY DO NOT CAUSE DISQUALIFICATION FROM  
EMPLOYMENT IF THE RECORDS HAVE BEEN EXPUNGED."

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**Amendment No. 1 to House Bill No. 1466.**

Amend House Bill No. 1466 as originally introduced:

Page 1, delete lines 11 through 13, and substitute the following:  
"PERSONS SUBJECT TO CRIMINAL BACKGROUND CHECKS UNDER ARKANSAS CODE §§ 9-28-409, 17-27-313, 17-87-312, 17-97-312, 17-103-307, 20-13-1106, 20-33-205, 20-48-804, AND 21-15-103; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 16 through 20, and substitute the following:  
"AN ACT TO PROVIDE THAT EXPUNGED RECORDS OF CERTAIN CRIMINAL OFFENSES DO NOT CAUSE DISQUALIFICATION FROM EMPLOYMENT."

AND

Delete everything after the Enacting Clause and substitute the following:

"SECTION 1. Arkansas Code § 9-28-409 is amended to read as follows:  
9-28-409. Criminal record and child maltreatment checks.

(a)(1) Each of the following persons in a child welfare agency shall be checked with the child maltreatment central registry in his or her state of residence and any state of residence in which the person has lived for the past six (6) years and in the person's state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all household members age ten (10) years and older;
- (D) An adoptive parent and all household members age ten (10) years and older;



(E) An owner having direct and unsupervised contact with children; and

(F) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) The board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures which would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency who has lived in Arkansas continuously for six (6) years or more shall be checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members age sixteen (16) years and older;

(D) An owner having direct and unsupervised contact with children; and

(E) A member of the agency's board of directors having direct and unsupervised contact with children.

(2)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that Department of Arkansas State Police criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

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

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

(c)(1) Each of the following persons in a child welfare agency who has

not lived in Arkansas continuously for the past six (6) years shall be checked with the Federal Bureau of Investigation for convictions of the offenses listed in this subchapter, in compliance with federal law and regulations and with policy and procedures promulgated by the board:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all family members age sixteen (16) years and older;
- (D) An owner having direct and unsupervised contact with children; and
- (E) A member of the agency's board of directors having direct and unsupervised contact with children.

(2)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

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

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

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

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the board with respect to his or her employment status or licensing status;

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

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

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee, who shall remain under conditional employment until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the

board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

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

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

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

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

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

(e)(1) Except as provided in ~~subdivision (d)(2)~~ subdivisions (d)(2) or (h)(1) of this section, no person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section shall be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or has 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:

- (A) Capital murder as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Manslaughter as prohibited in § 5-10-104;
- (D) Negligent homicide as prohibited in § 5-10-105;
- (E) Kidnapping as prohibited in § 5-11-102;
- (F) False imprisonment in the first degree and false imprisonment in the second degrees as prohibited in §§ 5-11-103 and 5-11-104;
- (G) Permanent detention or restraint as prohibited in § 5-11-106;
- (H) Battery in the first degree, battery in the second degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-202 and 5-13-203;
- (I) Aggravated assault as prohibited in § 5-13-204;
- (J) Assault in the first degree and assault in the second degree as prohibited in §§ 5-13-205 and 5-13-206;
- (K) Terroristic threatening in the first degree and terroristic threatening in the second degree as prohibited in § 5-13-301(a) and (b);
- (L) Any sexual offense as prohibited in § 5-14-101 et seq.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(AA) 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 section;

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

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

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

(B) Any Except as provided in subdivision (h)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole

supervision. This presumption can be rebutted in the following manner:

(i) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person served by the facility and is therefore qualified to serve in a child welfare agency. The applicant shall bear the burden of making such a showing; and

(ii) The board in its discretion may permit an applicant to serve in a child welfare agency notwithstanding having been convicted of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility. In making this determination, the board shall consider the following factors:

(a) The nature and severity of the crime;

(b) The consequences of the crime;

(c) The number and frequency of crimes;

(d) The relation between the crime and the

health, safety, and welfare of persons served by a child welfare agency, such as:

(1) The age and vulnerability of victims

of the crime;

(2) The harm suffered by the victim; and

(3) The similarity between the victim

and persons served by a child welfare agency;

(e) The time elapsed without a repeat of the

same or similar event;

(f) Documentation of successful completion of

training or rehabilitation pertinent to the incident; and

(g) Any other information that bears on the

applicant's ability to care for children or any other relevant information.

(C) The board's decision to disqualify a person serving in a child welfare agency pursuant to this section shall constitute the final administrative agency action and shall not be subject to review.

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

(A) Child abuse or neglect;

(B) Spousal abuse;

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

or

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

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

(A) Child abuse or neglect;

(B) Spousal abuse;

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

or

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

(g)(1) No foster child in the custody of the Department of Human Services shall be placed in the home of any foster or adoptive parent if the criminal record check reveals a felony conviction for physical assault,

battery, or a drug-related offense if the offense was committed within the past five (5) years.

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

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

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;
- (G) Incest, as prohibited in § 5-26-202;
- (H) Arson, as prohibited in § 5-38-301;
- (I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 2. Arkansas Code § 17-27-313 is amended to read as follows:  
17-27-313. Criminal background checks.

(a) On and after October 1, 1997, each first-time applicant for a license issued by the Arkansas Board of Examiners in Counseling shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no

person shall be eligible to receive or hold a license issued by the board 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 § 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, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
- (22) 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 - 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Burglary, as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;



(30) Stalking, as prohibited in § 5-71-229;  
(31) 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;

(32) Computer child pornography, as prohibited in § 5-27-603;  
and

(33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Upon Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure, or his or her authorized representative, or the person whose license is subject to revocation, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

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

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;
- (G) Incest, as prohibited in § 5-26-202;
- (H) Arson, as prohibited in § 5-38-301;
- (I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 3. Arkansas Code § 17-87-312 is amended to read as follows:  
17-87-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) [Repealed].

(f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or has 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 § 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 a controlled substance into the 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, as prohibited in § 5-14-103;
  - (15) Sexual indecency with a child, as prohibited in § 5-14-110;
  - (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
  - (17) Incest, as prohibited in § 5-26-202;
  - (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
  - (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
  - (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
  - (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
  - (22) 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 - 5-27-305, 5-27-402, and 5-27-403;
  - (23) Felony adult abuse, as prohibited in § 5-28-103;
  - (24) Theft of property, as prohibited in § 5-36-103;
  - (25) Theft by receiving, as prohibited in § 5-36-106;
  - (26) Arson, as prohibited in § 5-38-301;
  - (27) Burglary, as prohibited in § 5-39-201;
  - (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
  - (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
  - (30) Stalking, as prohibited in § 5-71-229;
  - (31) 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;
  - (32) Computer child pornography, as prohibited in § 5-27-603;
- and
- (33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(g)(1) The board may issue a nonrenewable temporary permit for licensure to a first-time applicant pending the results of the criminal background check. The permit shall be valid for no more than six (6) months.

(2) ~~Upon~~ Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the letter of

provisional licensure has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does

not pose a threat to the health or safety of the public.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

- (A) The affected applicant for licensure or his or her authorized representative; or
- (B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

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

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;

(G) Incest, as prohibited in § 5-26-202;  
(H) Arson, as prohibited in § 5-38-301;  
(I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and  
(J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 4. Arkansas Code § 17-97-312 is amended to read as follows:  
17-97-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Psychology Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board 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 § 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, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third

degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
- (22) 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 - 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Burglary, as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
- (30) Stalking, as prohibited in § 5-71-229;
- (31) 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;
- (32) Computer child pornography, as prohibited in § 5-27-603;

and

- (33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) ~~Upon~~ Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding a letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;

(C) The length of time since the crime;  
(D) Subsequent work history;  
(E) Employment references;  
(F) Character references; and  
(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the department.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

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

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;
- (G) Incest, as prohibited in § 5-26-202;
- (H) Arson, as prohibited in § 5-38-301;
- (I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 5. Arkansas Code § 17-103-307 is amended to read as follows:  
17-103-307. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Social Work Licensing Board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of

Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no person shall be eligible to receive or hold a license issued by the board 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 § 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, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
- (22) 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 - 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse, as prohibited in § 5-28-103;  
(24) Theft of property, as prohibited in § 5-36-103;  
(25) Theft by receiving, as prohibited in § 5-36-106;  
(26) Arson, as prohibited in § 5-38-301;  
(27) Burglary, as prohibited in § 5-39-201;  
(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

(29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;

(30) Stalking, as prohibited in § 5-71-229;

(31) 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;

(32) Computer child pornography, as prohibited in § 5-27-603;  
and

(33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) ~~Upon~~ Except as provided in subdivision (m)(1) of this section, upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure, his or her authorized representative, or the person whose license is subject to revocation or his or her authorized representative. No record, file, or document shall be removed from the custody of the Department of

Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

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

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (m)(2) of this section.

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;
- (G) Incest, as prohibited in § 5-26-202;
- (H) Arson, as prohibited in § 5-38-301;
- (I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 6. Arkansas Code § 20-13-1106 is amended to read as follows:  
20-13-1106. Disqualifying offenses - Waiver.

(a) ~~The~~ Except as provided in subdivision (e)(1) of this section, the Division of EMS and Trauma Systems shall issue a determination that a person is disqualified from certification or recertification if the person has been found guilty of or has pled guilty or nolo contendere to any of the offenses listed in subsection (b) of this section. However, the division will forward a request for a waiver to the Director of the Department of Health on all applicants who have been convicted of the crimes listed in subsection (b) of this section if five (5) years have passed since the conviction, if five (5) years have passed since release from custodial confinement, or if the applicants are currently certified emergency medical technicians, prior to making the final determination on certification or recertification. These individuals will not be suspended prior to the director's making the final determination.

(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 the 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, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (3);
- (22) 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 - 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Burglary, as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
- (30) Stalking, as prohibited in § 5-71-229;
- (31) 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 (b);
- (32) Fourth or subsequent driving while intoxicated violations which constitute felony offenses under § 5-65-111(b)(3) and (4);
- (33) Computer child pornography, as prohibited in § 5-27-603;

and

(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(c) An applicant shall not be disqualified from certification or recertification when the applicant has been found guilty of or has pled 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, or sexual contact.

(d)(1) The provisions of this section may be waived by the Department of Health upon written request by the person who is the subject of the criminal history check.

(2) The written request for waiver must be mailed to the director within fifteen (15) calendar days after receipt of the determination by the division.

(3) Factors to be considered before granting a waiver shall include, but not be limited to:

- (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; and
- (G) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.

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

(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 shall result in permanent disqualification of employment:

- (A) Capital murder, as prohibited in § 5-10-101;
- (B) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (C) Kidnapping, as prohibited in § 5-11-102;
- (D) Rape, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-203 and 5-27-204;
- (G) Incest, as prohibited in § 5-26-202;
- (H) Arson, as prohibited in § 5-38-301;
- (I) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201; and
- (J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103.

SECTION 7. Arkansas Code § 20-33-205 is amended to read as follows:  
20-33-205. Provisional licenses - Disqualification from employment - Resubmission of applications - Denial or revocation - Penalties.

(a) Except as provided in ~~subsection (e)~~ subsections (c), (d), or (f) of this section:

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

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

(3)(A) A qualified entity 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) Except as provided in ~~subsection (e)~~ subsections (c), (d), or (f) of this section:

(i) A licensing agency shall issue a forty-five-day provisional license to a qualified entity whose operator has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section; and

(ii) A licensing agency shall issue a determination that a person is disqualified from employment with a qualified entity if the person has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section. A requesting agency shall issue a determination that a person or ElderChoices provider is disqualified from providing care to the elderly or to an individual with a disability, or both, if the person or provider has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section.

(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, as prohibited in §§ 5-13-201 - 5-13-203;

(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, as prohibited in § 5-14-103;

(15) Sexual indecency with a child, as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

- (17) Incest, as prohibited in § 5-26-202;
  - (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
  - (19) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201;
  - (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
  - (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (3);
  - (22) 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 - 5-27-305, 5-27-402, and 5-27-403;
  - (23) Felony adult abuse, as prohibited by § 5-28-103;
  - (24) Theft of property, as prohibited in § 5-36-103;
  - (25) Theft by receiving, as prohibited in § 5-36-106;
  - (26) Arson, as prohibited in § 5-38-301;
  - (27) Burglary, as prohibited in § 5-39-201;
  - (28) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in § 5-64-401;
  - (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
  - (30) Stalking, as prohibited in § 5-71-229;
  - (31) 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;
  - (32) Forgery, as prohibited in § 5-37-201;
  - (33) Breaking or entering, as prohibited in § 5-39-202;
  - (34) Obtaining a controlled substance by fraud, as prohibited in § 5-64-403;
  - (35) Computer child pornography, as prohibited in § 5-27-603;
- and
- (36) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(c) A qualified entity that is issued a provisional license based on the criminal history of the operator may resubmit the application for licensure with a new operator. If the qualified entity does not resubmit the application within fifteen (15) days of the issuance of the provisional license, then the qualified entity's license shall be immediately denied or revoked.

(d)(1) The provisions of this section shall not be waived by the licensing or requesting agency.

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, a conviction ~~for an~~ or plea of guilty or nolo contendere for a felony offense listed in subsection (b) of this section shall not disqualify an applicant for employment if the date of conviction of the offense is at least ten (10) years from the date of the application and the individual has no criminal convictions of any type or nature during the ten-year period. ~~Te~~

~~the extent that there is any conflict with § 17-1-103, this section shall be deemed to supersede § 17-1-103.~~

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

- (i) Capital murder, as prohibited in § 5-10-101;
- (ii) Murder in the first degree and murder in the second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (iii) Kidnapping, as prohibited in § 5-11-102;
- (iv) Rape, as prohibited in § 5-14-103;
- (v) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (vi) Endangering the welfare of incompetent person in the first degree, as prohibited in § 5-27-201;
- (vii) Felony adult abuse, as prohibited by § 5-28-103; and
- (viii) Arson, as prohibited in § 5-38-301.

(e)(1) A qualified entity shall not be disqualified from licensure when the operator 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.

(2) An applicant, ElderChoices provider, or employee shall not be disqualified from permanent employment or providing care to the elderly or an individual with a disability, or both, when the applicant, provider, 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.

(f) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (b) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (d)(2)(B) of this section.

~~(f)~~(g) If an operator or qualified entity fails or refuses to cooperate in obtaining criminal records checks, such circumstances shall be grounds to deny or revoke the qualified entity's license or other operating authority, provided the process of obtaining criminal records checks shall not delay the process of the application for a license or other operational authority.

~~(g)~~(h) Any unlicensed qualified entity violating this subchapter shall be guilty of a Class A misdemeanor for each violation.

(i) To the extent that there is any conflict with § 17-1-103, this section shall supersede § 17-1-103.

SECTION 8. Arkansas Code § 20-48-804 is amended to read as follows:  
20-48-804. Disqualification from employment - Denial or revocation - Penalties.

(a)(1) A Except as provided in subsection (f) of this section, 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 of or pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section.

(2) A Except as provided in subsection (f) of this section, 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, as prohibited in §§ 5-13-201 - 5-13-203;
- (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, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (3);
- (22) 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;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in § 5-64-401;
- (28) Burglary, as prohibited in § 5-39-201;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;



- (30) Stalking, as prohibited in § 5-71-229;
  - (31) Forgery, as prohibited in § 5-37-201;
  - (32) Breaking or entering, as prohibited in § 5-39-202;
  - (33) Obtaining a controlled substance by fraud, as prohibited in § 5-64-403;
  - (34) 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;
  - (35) Computer child pornography, as prohibited in § 5-27-603;
- and
- (36) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

(c)(1) The provisions of this section shall not be waived by the licensing or requesting agency. Except as provided in subdivision (c)(2) of this section, one (1) conviction for an offense listed in subsection (b) of this section shall not disqualify an applicant for employment if the date of the conviction is at least ten (10) years prior to the date of the application and the individual has had no criminal convictions of any type or nature during the ten-year period.

(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 shall result in permanent disqualification of employment:

- (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, as prohibited in § 5-14-103;
- (E) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (F) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (G) Felony adult abuse, as prohibited in § 5-28-103; and
- (H) Arson, as prohibited in § 5-38-301.

(3) An applicant or employee shall not be disqualified from permanent employment 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 records 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.

(f) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (b) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (c)(2) of this section.

SECTION 9. Arkansas Code § 21-15-103 is amended to read as follows:  
21-15-103. Deadline - Scope of check - Report - Notice - Discharge.

(a)(1)(A) State agencies shall ensure that all employees in designated positions will 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.

(B) 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) State agencies shall ensure that all employees in designated positions will have applied for central registry checks by October 1, 2002, and shall adopt a rule that prescribes how central registry checks on incumbent employees will be phased in over the period of time prior to July 1, 2002. The rule shall require incumbent employees to apply for central registry checks in conjunction with the employee's anniversary of employment or any time before that date.

(3) In accordance with subdivisions (a)(1) and (2) of this section, each employee of a state agency in a designated position shall complete a criminal history check form and a central registry check form obtained from the state agency and shall submit the form to the state agency. The state agency shall forward:

(A)(i) The criminal history check form to the Identification Bureau of the Department of Arkansas State Police.

(ii) The state agency shall pay any fee associated with the criminal history check on behalf of the employee; and

(B)(i) The central registry check to the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nurses Assistants Central Registry to review the databases.

(ii) The state agency shall pay any fee associated with the central registry checks.

(b)(1) Except as provided in subdivision (b)(2) of this section, 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 designated position 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)(1) Upon completion of a criminal history check on an employee, the bureau shall issue a report to the state agency.

(2)(A) The state agency shall determine whether the employee is disqualified from employment under subsection (g) of this section.

(B) 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) If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/Employment Clearance Registry, the state agency shall discharge the

employee.

(f) A state agency shall inform all employees in designated positions that:

(1) Continued employment is contingent upon the results of a criminal history check and a central registry check; and

(2) The employee has the right to obtain a copy of his or her:

(A) Criminal history report from the bureau; and

(B) Central registry report from the registries.

(g) A Except as provided in subdivision (h)(1) of this section, a state agency shall discharge from employment in a designated position 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 Arkansas Administrative Procedure 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 in § 5-13-301;

(14) Rape, as prohibited in § 5-14-103;

(15) Sexual indecency with a child, as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, or fourth degree as prohibited in §§ 5-14-124 - 5-14-127;

(17) Incest, as prohibited in § 5-26-202;

(18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;

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

(21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);

(22) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or the use of a child or consent to the 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;

(23) Felony adult abuse, as prohibited in § 5-28-103;

(24) Theft of property, as prohibited in § 5-36-103;

(25) Theft by receiving, as prohibited in § 5-36-106;

(26) Arson, as prohibited in § 5-38-301;

(27) Burglary, as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

(29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;

(30) Stalking, as prohibited in § 5-71-229;

(31) 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;

(32) Computer child pornography, as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

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

(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 shall result in permanent disqualification of employment:

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

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

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

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

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

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

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

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

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

(J) Adult abuse that constitutes a felony, as prohibited in § 5-28-103."

The Amendment was read  
By: Representative Verkamp  
GRH/GRH - 02-22-2005 16:18  
GRH208

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Chief Clerk