

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H3/4/97 H3/11/97

## A Bill

HOUSE BILL 1484

4  
5 By: Representative Young  
6  
7

### For An Act To Be Entitled

9 "AN ACT TO *SUBJECT* APPLICANTS FOR EMPLOYMENT WITH AND  
10 EMPLOYEES OF STATE AGENCIES IN POSITIONS THAT INCLUDE  
11 DIRECT CONTACT WITH CHILDREN TO A CRIMINAL BACKGROUND  
12 CHECK; TO LIST CRIMINAL OFFENSES REQUIRING DISCHARGE FROM  
13 EMPLOYMENT OR PREVENTION OF EMPLOYMENT WITH STATE AGENCIES  
14 IN POSITIONS THAT INCLUDE DIRECT CONTACT WITH CHILDREN;  
15 AND FOR OTHER PURPOSES."

### Subtitle

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17  
18 "TO *SUBJECT* APPLICANTS FOR EMPLOYMENT  
19 WITH AND EMPLOYEES OF STATE AGENCIES IN  
20 POSITIONS THAT INCLUDE DIRECT CONTACT  
21 WITH CHILDREN TO A CRIMINAL BACKGROUND  
22 CHECK"  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. As used in this act,

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

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

33 (3) "Direct contact" means the ability to interview, question, examine,  
34 interact with, talk with, or communicate with a child without being in the  
35 physical presence of a person other than the child.  
36

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

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

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

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

32                   (2) If the state agency can verify that the applicant has been  
33 employed by a state agency in a position that includes, as part of the job  
34 description, direct contact with a child within sixty (60) days before the  
35 application or has lived continuously in the State of Arkansas for the past  
36 five (5) years, the Bureau shall conduct only a state criminal history check

1 on the applicant.

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

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

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

16 (f) No person shall be eligible for employment with a state agency in a  
17 position that includes, as part of the job description, direct contact with a  
18 child or children if that person has pleaded guilty or nolo contendere to, or  
19 been found guilty of, any of the following offenses by any court in the State  
20 of Arkansas or of any similar offense by a court in another state or of any  
21 similar offense by a federal court:

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

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

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

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

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

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

30 (7) Permanent detention or restraint, as prohibited in A.C.A.  
31 § 5-11-106;

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

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

34 (10) Battery in the first degree, as prohibited in A.C.A.  
35 § 5-13-201;

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

- 1           (12) Introduction of controlled substance into body of another  
2 person, as prohibited in A.C.A. § 5-13-210;
- 3           (13) Terroristic threatening in the first degree, as prohibited  
4 in A.C.A. § 5-13-301;
- 5           (14) Rape and carnal abuse in the first degree, second degree,  
6 and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106;
- 7           (15) Sexual abuse in the first degree and second degree, as  
8 prohibited in A.C.A. §§ 5-14-108 and 5-14-109;
- 9           (16) Sexual solicitation of a child, as prohibited in A.C.A.  
10 § 5-14-110;
- 11           (17) Violation of a minor in the first degree and second degree,  
12 as prohibited in A.C.A. §§ 5-14-120 and 5-14-121;
- 13           (18) Incest, as prohibited in A.C.A. § 5-26-202;
- 14           (19) Offenses against the family, as prohibited in A.C.A.  
15 §§ 5-26-303 - 5-26-306
- 16           (20) Endangering the welfare of incompetent person in the first  
17 degree, as prohibited in A.C.A. § 5-27-201;
- 18           (21) Endangering the welfare of a minor in the first degree, as  
19 prohibited in A.C.A. § 5-27-203;
- 20           (22) Permitting child abuse, as prohibited in subdivisions (a)(1)  
21 and (a)(3) of A.C.A. § 5-27-221;
- 22           (23) Engaging children in sexually explicit conduct for use in  
23 visual or print media, transportation of minors for prohibited sexual conduct,  
24 or pandering or possessing visual or print medium depicting sexually explicit  
25 conduct involving a child, or use of a child or consent to use of a child in a  
26 sexual performance by producing, directing, or promoting a sexual performance  
27 by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402,  
28 and 5-27-403;
- 29           (24) Felony adult abuse, as prohibited by A.C.A. § 5-28-103;
- 30           (25) Theft of property, as prohibited in A.C.A. § 5-36-103;
- 31           (26) Theft by receiving, as prohibited in A.C.A. § 5-36-106;
- 32           (27) Arson, as prohibited in A.C.A. § 5-38-301;
- 33           (28) Burglary, as prohibited in A.C.A. § 5-39-201;
- 34           (29) Felony violation of the Uniform Controlled Substances Act,  
35 as prohibited in A.C.A. § 5-64-401;
- 36           (30) Promotion of prostitution in the first degree, as prohibited

1 in A.C.A. § 5-70-104;  
2 (31) Stalking, as prohibited in A.C.A. § 5-71-229; and  
3 (32) Criminal attempt, criminal complicity, criminal  
4 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,  
5 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
6 subsection.

7  
8 SECTION 3. (a)(1) State agencies shall ensure that all employees in  
9 positions that include, as part of the job description, direct contact with a  
10 child have applied for criminal history checks by October 1, 2000 and shall  
11 adopt a rule that prescribes how criminal background checks on incumbent  
12 employees will be phased-in over the period of time prior to July 1, 2000.  
13 The rule shall require incumbent employees to apply for criminal history  
14 checks in conjunction with the employees anniversary of employment or any  
15 time before that date.

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

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

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

34 (c) Upon completion of a criminal history check on an employee, the  
35 Bureau shall issue a report to the state agency. The state agency shall  
36 determine whether the employee is disqualified from employment under

1 subsection (f) of this section, and if the state agency determines that an  
2 employee is disqualified from employment, then the state agency shall  
3 discharge the employee.

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

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

12 (f) A state agency shall discharge from employment in a position that  
13 includes, as part of the job description, direct contact with a child or  
14 children any person who has pleaded guilty or nolo contendere to, or been  
15 found guilty of, any of the following offenses by any court in the State of  
16 Arkansas or of any similar offense by a court in another state or of any  
17 similar offense by a federal court, but only after an opportunity for a  
18 hearing conducted in accordance with the Administrative Procedures Act, A.C.A.  
19 25-15-201, et seq.:

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

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

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

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

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

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

28 (7) Permanent detention or restraint, as prohibited in A.C.A.  
29 § 5-11-106;

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

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

32 (10) Battery in the first degree, as prohibited in A.C.A.  
33 § 5-13-201;

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

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

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

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

5  
6           SECTION 4. (a) The provisions of subsection (f) of section 2 of this  
7 act and subsection (f) of section 3 of this act may be waived by the director  
8 of a state agency upon the request of:

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

11                   (2) An affected applicant for employment; or

12                   (3) The person subject to discharge.

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

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

16                   (2) The circumstances surrounding the crime;

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

18                   (4) Subsequent work history;

19                   (5) Employment references;

20                   (6) Character references; and

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

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

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

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

35  
36           SECTION 6. (a) All state agencies with a position that includes, as



1 part of the job description, direct contact with a child, shall adopt the  
2 necessary rules and regulations to fully implement the provisions of this act.

3 (b) Each state agency shall maintain on file, subject to inspection by  
4 the Arkansas Crime Information Center or the Bureau evidence that criminal  
5 history checks required by this act have been initiated on all applicants and  
6 employees.

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

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

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

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

24  
25 SECTION 8. Any person who submits evidence of having maintained  
26 employment in the state of Arkansas for the past twelve (12) months and of  
27 successfully completing a criminal history check within the last twelve (12)  
28 months or in accordance with that persons professional license shall not be  
29 required to apply for a criminal history check under this act.

30  
31 SECTION 9. Immunity.

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

35  
36 SECTION 10. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
2 Code Revision Commission shall incorporate the same in the Code.

3

4 SECTION 11. If any provision of this act or the application thereof to  
5 any person or circumstance is held invalid, such invalidity shall not affect  
6 other provisions or applications of the act which can be given effect without  
7 the invalid provision or application, and to this end the provisions of this  
8 act are declared to be severable.

9

10 SECTION 12. All laws and parts of laws in conflict with this act are  
11 hereby repealed.

12

13 SECTION 13. EMERGENCY. It is found and determined by the General  
14 Assembly of the State of Arkansas that Arkansas children and their parents or  
15 guardians should be secure in the knowledge that persons employed by the State  
16 who have direct contact with children do not have criminal records and are not  
17 a potential threat to the safety of their children; and that an increasing  
18 number of incidents are occurring where persons employed by the State are  
19 abusing children entrusted into the care of the State; and that in some cases  
20 these incidents could have been avoided had the persons been subjected to a  
21 criminal records check. It is further found and determined that, in some  
22 instances, allegations of employee criminal misconduct involving children are  
23 not being investigated. Therefore, an emergency is declared to exist and this  
24 act being immediately necessary for the preservation of the public peace,  
25 health and safety shall become effective on October 1, 1997.

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/s/Rep. Young

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