

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

A Bill

HOUSE BILL 2050

4
5 By: Representatives Flanagin and Goodwin

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 RANDOM CRIMINAL BACKGROUND
12 CHECKS; 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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18 "TO SUBJECT APPLICANTS FOR EMPLOYMENT
19 WITH AND EMPLOYEES OF STATE AGENCIES IN
20 POSITIONS THAT INCLUDE DIRECT CONTACT
21 WITH CHILDREN TO RANDOM CRIMINAL
22 BACKGROUND CHECKS"

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) "Bureau" means the Identification Bureau of the Department of the
28 Arkansas State Police;

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

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

33 (4) "State agency" means any agency, authority, board, bureau,
34 commission, council, department, office, or officer of the State receiving an
35 appropriation by the General Assembly. The term shall not include
36 municipalities, townships, counties, school districts, and state-supported

1 institutions of higher education.

2

3 SECTION 2. (a) When a person applies for employment with a state
 4 agency in a position that includes, as part of the job description, direct
 5 contact with a child, the state agency shall require the applicant to complete
 6 a statement that:

7 (1) contains the name, address, and date of birth appearing on a
 8 valid identification document issued by a government entity to the person who
 9 is applying for the position;

10 (2) indicates whether the person has been found guilty of or pled
 11 guilty or nolo contendere to a crime, and if so, includes description of the
 12 crime and the particulars of the finding of guilt or the plea;

13 (3) notifies the person that state agencies may request an
 14 employee or applicant to submit to a criminal history check;

15 (4) informs the person how to object to the content of a report
 16 of the persons criminal history;

17 (5) contains the notarized signature of the applicant; and

18 (6) contains the following warning, "IF YOU PROVIDE FALSE
 19 INFORMATION ON THIS STATEMENT YOU MAY BE GUILTY OF A CLASS D FELONY AND
 20 SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS."

21 (b) Any person who knowingly provides false information on the
 22 statement required under subsection (a) of this section shall be guilty of a
 23 Class D felony.

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25 SECTION 3. (a)(1) When a person applies for employment with a state
 26 agency in a position that includes, as part of the job description, direct
 27 contact with a child and if the state agency intends to make an offer of
 28 employment to the applicant, the state agency may require the applicant to
 29 submit to a criminal history check by completing a form obtained from the
 30 Bureau.

31 (2) A state agency, at any time, may require an employee in a
 32 position that includes as part of the job description direct contact with a
 33 child to submit to a criminal history check by completing a form obtained from
 34 the Bureau.

35 (b) If a state agency requires an applicant or an employee to submit a
 36 criminal history check, the state agency shall, within five (5) days of

1 receipt of the criminal history check form from the applicant or employee,
2 forward the criminal history check form to the Bureau and request the Bureau
3 to conduct a state and national criminal history check on the applicant or the
4 employee. A criminal history check shall conform to the applicable federal
5 standards and shall include the taking of a complete set of fingerprints.
6 The state agency shall pay any fee associated with the criminal history check
7 of any applicant or any employee.

8 (c)(1) A state agency shall randomly request applicants for employment
9 and employees to submit to a criminal history check, and shall maintain on
10 file, subject to inspection by the Arkansas Crime Information Center and the
11 Bureau, evidence that criminal history checks have been randomly conducted on
12 applicants and employees.

13 (2) The Bureau shall conduct random checks of state agencies to
14 ensure that all state agencies with a position that includes direct contact
15 with a child are requesting applicants for employment and employees to submit
16 to criminal history checks in accordance with this act.

17 (3) If a state agency is not conducting criminal history checks
18 in accordance with this act, the Bureau shall conduct random criminal history
19 checks on applicants for employment with and employees of the state agency for
20 a fee of one hundred dollars (\$100) per criminal history check. This fee
21 shall be in addition to the fee for conducting the criminal history check.

22 (d) Upon completion of a criminal history check on an applicant or
23 employee, the Bureau shall issue a report to the state agency, and the state
24 agency shall determine whether the applicant or employee is disqualified from
25 employment with the state agency. If the state agency determines that an
26 applicant or employee is disqualified from employment, then the state agency
27 shall deny employment to the applicant or immediately terminate the employment
28 of the employee.

29 (e) All state agencies with a position that includes direct contact
30 with a child shall inform applicants for positions that include direct contact
31 with a child and employees in positions that include direct contact with a
32 child that:

33 (1) they may be subject to a random criminal history check;

34 (2) continued employment is contingent upon the results of such a
35 criminal records check; and

36 (3) the applicant or employee has the right to obtain a copy of

1 the report of the persons criminal history from the Bureau.

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3 SECTION 4. (a) Except as provided in subsection (b), a state agency
 4 shall not knowingly employ a person who has been found guilty of or has pled
 5 guilty or nolo contendere to any of the following offenses:

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

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

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

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

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

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

14 (7) Permanent detention or restraint, as prohibited in A.C.A.
 15 § 5-11-106;

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

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

18 (10) Battery in the first degree, as prohibited in A.C.A.
 19 § 5-13-201;

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

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

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

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

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

29 (16) Sexual solicitation of a child, as prohibited in A.C.A.
 30 § 5-14-110;

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

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

34 (19) Offenses against the family, as prohibited in A.C.A.
 35 §§ 5-26-303 - 5-26-306

36 (20) Endangering the welfare of incompetent person in the first

1 degree, as prohibited in A.C.A. § 5-27-201;

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

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

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

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

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

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

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

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

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

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

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

23 (32) Criminal attempt, criminal complicity, criminal
 24 solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201,
 25 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this
 26 subsection.

27 (b)(1) The provisions of this section may be waived by the director of
 28 a state agency upon request of a supervisor or other managerial employee in
 29 the state agency or of the person who is the subject of the criminal history
 30 check. Factors to be considered before granting a waiver shall include, but
 31 not be limited to:

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

33 (2) the circumstances surrounding the crime;

34 (3) the length of time since the adjudication of guilt;

35 (4) the persons subsequent work history;

36 (5) the persons employment references;

1 (6) the persons character references;
 2 (7) the nurse aide registry records;and
 3 (8) any other evidence demonstrating that the person does not
 4 pose a threat to the health or safety of persons to be cared for.

5 (c) A person may challenge the completeness or accuracy of criminal
 6 history information pursuant to A.C.A. 12-12-1013.

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 8 SECTION 5. (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 records check, the Bureau shall
 15 forward all information obtained concerning the applicant or employee to the
 16 Arkansas Crime Information Center.

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 18 SECTION 6. (a) The Arkansas Crime Information Center, the Bureau, and
 19 all state agencies with a position that includes direct contact with a child
 20 shall cooperate to prepare forms and promulgate consistent regulations as
 21 necessary to implement this act.

22 (b) Each state agency with a position that includes direct contact with
 23 children shall establish by regulation a procedure for an applicant or an
 24 employee to challenge a determination that the applicant or employee is
 25 disqualified from employment.

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 27 SECTION 7. (a) Any information received by a state agency from the
 28 Identification Bureau of the Department of Arkansas State Police pursuant to
 29 this act is specifically exempt from disclosure under the Arkansas Freedom of
 30 Information Act, A.C.A. § 25-19-101, et seq., except as provided in subsection
 31 (b) of this section.

32 (b)(1) Any information received by a state agency pursuant to this act
 33 shall only be available for examination by the affected applicant for
 34 employment, the employee who is subject to discharge, or an authorized
 35 representative of the applicant or employee, and no record, file, or document
 36 shall be removed from the custody of the state agency.

1 (2) Any information made available to the affected applicant for
2 employment or the employee who is subject to discharge shall be information
3 pertaining to that applicant only.

4 (c) Rights of privilege and confidentiality established herein shall
5 not extend to any document created for purposes other than criminal background
6 checks conducted under this act.

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8 SECTION 8. This act shall become effective on October 1, 1997.

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10 SECTION 9. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 10. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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

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