

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H2/28/01

A Bill

HOUSE BILL 1703

5 By: Representative J. Elliott
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 21-15-101 THROUGH 21-15-
10 109 TO REQUIRE BACKGROUND CHECKS ON STATE EMPLOYEES
11 HAVING DIRECT CONTACT WITH MENTALLY ILL AND
12 DEVELOPMENTALLY DISABLED PERSONS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 AN ACT TO REQUIRE BACKGROUND CHECKS ON
16 STATE EMPLOYEES HAVING DIRECT CONTACT
17 WITH MENTALLY ILL AND DEVELOPMENTALLY
18 DISABLED PERSONS.
19
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code 21-15-101 is amended to read as follows:
25 21-15-101. Definitions.

26 As used in this subchapter:

27 (1) "Applicant" means a person applying for employment with a state
28 agency;

29 (2) "Central registry check" means a review of the databases of the
30 Child Maltreatment Central Registry, the Adult Abuse Central Registry and the
31 Certified Nursing Assistant/Employment Clearance Registry maintained by the
32 Office of Long Term Care pursuant to 42 C.F.R. § 483.156 and § 20-10-203;

33 ~~(2)(3)~~ "Child" means a minor under the age of eighteen (18);

34 ~~(3)(4)~~ "Designated position" means a position in which a person is
35 employed by a state agency to provide care, supervision, treatment, or any
36 other services to the elderly, ~~to individuals with mental or physical~~

1 ~~disabilities~~ mentally ill or developmentally disabled persons, to individuals
 2 with mental illnesses, or to children who reside in any state-operated
 3 facility, or a position in which the applicant or employee will have direct
 4 contact with a child;

5 ~~(4)(5)~~ "Direct contact" means the ability to interview, question,
 6 examine, interact with, talk with, or communicate with a child without being
 7 in the physical presence of a person other than the child;

8 ~~(5)(6)~~ "Elderly" means persons age sixty-five (65) or older; and

9 ~~(6)(7)~~ "State agency" means any agency, authority, board, bureau,
 10 commission, council, department, office, or officer of the state receiving an
 11 appropriation by the General Assembly. The term shall not include
 12 municipalities, townships, counties, school districts, and state-supported
 13 institutions of higher learning.

14 (8)(A) "Mentally ill persons" are those who suffer from a substantial
 15 impairment of emotional processes, or of the ability to exercise conscious
 16 control of their actions, or the ability to perceive reality or to reason,
 17 when the impairment is manifested in instances of extremely abnormal behavior
 18 or extremely faulty perceptions.

19 (B) "Mentally ill persons" does not include persons whose
 20 impairment is solely caused by epilepsy, continuous or noncontinuous periods
 21 of intoxication caused by substances such as alcohol or drugs, or dependence
 22 upon or addiction to any substance such as alcohol or drugs.

23 (9) "Developmentally disabled person" means persons with a disability
 24 which:

25 (A) Is attributable to mental retardation, cerebral palsy,
 26 epilepsy, or autism;

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

32 (C) Is attributable to dyslexia resulting from a disability
 33 associated with mental retardation, cerebral palsy, epilepsy, or autism.

34
 35 SECTION 2. Arkansas Code 21-15-102 is amended to read as follows:

36 21-15-102. Positions involving direct contact with children, mentally

1 ill and developmentally disabled persons.

2 (a)(1)(A) When a person applies for employment with a state agency in a
3 designated position 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 and a central registry check form obtained from the state agency
6 and shall submit the form to the state agency as part of the application
7 process.

8 (B) If the state agency intends to make an offer of
9 employment to the applicant, the state agency shall, within five (5) days of
10 ~~such~~ the decision, forward:

11 (i) ~~the~~ The criminal history check form to the
12 Identification Bureau of the Department of Arkansas State Police and request
13 the bureau to review the bureau's database of criminal history checks on state
14 agency employees in designated positions. Within three (3) days of the receipt
15 of a request to review the database, the bureau shall notify the state agency
16 if the database contains any criminal history records on the applicant; and

17 (ii) The central registry check form to the Child
18 Mal treatment Central Registry, the Adult Abuse Central Registry and the
19 Certified Nursing Assistant/Employment Clearance Registry for a central
20 registry check. The state agency shall pay any fee associated with the central
21 registry check on behalf of the applicant. Within three (3) days of the
22 receipt of a request for a central registry check, the central registry shall
23 notify the state agency if the database contains any information naming the
24 applicant as an offender or perpetrator of child or adult abuse.

25 (2) If no criminal history or central registry records regarding
26 the applicant are found in the database, then the state agency may make an
27 offer of temporary employment to the applicant while the bureau completes a
28 criminal history check and the state agency determines whether the applicant
29 is disqualified from employment under subsection (f) of this section.

30 (3) If a criminal history record regarding the applicant is found
31 in the bureau's database, then the applicant is temporarily disqualified from
32 employment until the state agency determines whether the applicant is
33 disqualified from employment under subsection (f) of this section. If the
34 state agency determines that the applicant is not disqualified, then the state
35 agency may continue to temporarily employ the applicant while the bureau
36 completes a criminal history check.

1 (4) If an applicant has been named as an offender or perpetrator
2 in a true, substantiated, or founded report from the Child Maltreatment
3 Central Registry, the Adult Abuse Central Registry or the Certified Nursing
4 Assistant/Employment Clearance Registry, the applicant shall be immediately
5 disqualified.

6 (b)(1) Except as provided in subdivision (b)(2) of this section, the
7 bureau shall conduct a state criminal history check and a national criminal
8 history check on an applicant upon receiving a criminal history check request
9 from a state agency.

10 (2) If the state agency can verify that the applicant has been
11 employed by a state agency in a ~~position that includes, as part of the job~~
12 ~~description, direct contact with a child~~ designated position within sixty (60)
13 days before the application or has lived continuously in the State of Arkansas
14 for the past five (5) years, the bureau shall conduct only a state criminal
15 history check on the applicant.

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

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

25 (e) Before making a temporary or permanent offer of employment, a state
26 agency shall inform applicants that continued employment is contingent upon
27 the results of a criminal history and a central registry check and that the
28 applicant has the right to obtain a copy of the report of the person's
29 criminal history from the bureau and the right to obtain a copy of the report
30 of the person's central registry report from the registries.

31 (f) No person shall be eligible for employment with a state agency in a
32 ~~position that includes, as part of the job description, direct contact with a~~
33 ~~child~~ designated position if that person has pleaded guilty or nolo contendere
34 to, or been found guilty of, any of the following offenses by any court in the
35 State of Arkansas or of any similar offense by a court in another state or of
36 any similar offense by a federal court:

- 1 (1) Capital murder, as prohibited in § 5-10-101;
- 2 (2) Murder in the first degree and second degree, as prohibited
3 in §§ 5-10-102 and 5-10-103;
- 4 (3) Manslaughter, as prohibited in § 5-10-104;
- 5 (4) Negligent homicide, as prohibited in § 5-10-105;
- 6 (5) Kidnapping, as prohibited in § 5-11-102;
- 7 (6) False imprisonment in the first degree, as prohibited in § 5-
8 11-103;
- 9 (7) Permanent detention or restraint, as prohibited in § 5-11-
10 106;
- 11 (8) Robbery, as prohibited in § 5-12-102;
- 12 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 13 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 14 (11) Aggravated assault, as prohibited in § 5-13-204;
- 15 (12) Introduction of controlled substance into body of another
16 person, as prohibited in § 5-13-210;
- 17 (13) Terroristic threatening in the first degree, as prohibited
18 in § 5-13-301;
- 19 (14) Rape and carnal abuse in the first degree, second degree,
20 and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- 21 (15) Sexual abuse in the first degree and second degrees, as
22 prohibited in §§ 5-14-108 and 5-14-109;
- 23 (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- 24 (17) Violation of a minor in the first degree and second degree,
25 as prohibited in §§ 5-14-120 and 5-14-121;
- 26 (18) Incest, as prohibited in § 5-26-202;
- 27 (19) Offenses against the family, as prohibited in §§ 5-26-303 -
28 5-26-306;
- 29 (20) Endangering the welfare of an incompetent person in the
30 first degree, as prohibited in § 5-27-201;
- 31 (21) Endangering the welfare of a minor in the first degree, as
32 prohibited in § 5-27-203;
- 33 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)
34 and (a)(3) of § 5-27-221;
- 35 (23) Engaging children in sexually explicit conduct for use in
36 visual or print media, transportation of minors for prohibited sexual conduct,

1 or pandering or possessing visual or print medium depicting sexually explicit
2 conduct involving a child, or the use of a child or consent to the use of a
3 child in a sexual performance by producing, directing, or promoting a sexual
4 performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-
5 27-402, and 5-27-403;

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

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

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

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

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

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

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

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

16 (32) Criminal attempt, criminal complicity, criminal
17 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-
18 3-301, and 5-3-401, to commit any of the offenses listed in this subsection.
19

20 SECTION 3. Arkansas Code 21-15-103 is amended to read as follows:

21 21-15-103. Deadline - Scope of check - Report - Notice - Discharge.

22 (a)(1) State agencies shall ensure that all employees in designated
23 positions will have applied for criminal history checks by October 1, 2000,
24 and shall adopt a rule that prescribes how criminal background checks on
25 incumbent employees will be phased in over the period of time prior to July 1,
26 2000. The rule shall require incumbent employees to apply for criminal history
27 checks in conjunction with the employee's anniversary of employment or any
28 time before that date.

29 (2) State agencies shall ensure that all employees in designated
30 positions will have applied for central registry checks by October 1, 2002,
31 and shall adopt a rule that prescribes how central registry checks on
32 incumbent employees will be phased in over the period of time prior to July 1,
33 2002. The rule shall require incumbent employees to apply for central registry
34 checks in conjunction with the employee's anniversary of employment or any
35 time before that date.

36 ~~(2)~~ (3) In accordance with subdivision (a)(1) and (2) of this

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

5 (A) the The criminal history check form to the
6 Identification Bureau of the Department of Arkansas State Police. The state
7 agency shall pay any fee associated with the criminal history check on behalf
8 of the employee; and

9 (B) The central registry check to the Child Maltreatment
10 Central Registry, the Adult Abuse Central Registry and the Certified Nurses
11 Assistants Central Registry to review the databases. The state agency shall
12 pay any fee associated with the central registry checks.

13 (b)(1) Except as provided in subdivision (b)(2) of this section, the
14 bureau shall conduct a state criminal history check and a national criminal
15 history check on an applicant upon receiving a criminal history check request
16 from a state agency.

17 (2) If the state agency can verify that the applicant has been
18 employed by a state agency in a designated position within sixty (60) days
19 before the application or has lived continuously in the State of Arkansas for
20 the past five (5) years, the bureau shall conduct only a state criminal
21 history check on the applicant.

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

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

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

36 ~~(e)~~(f) A state agency shall inform all employees in positions that

1 include, as part of the job description, direct contact with a child, that
 2 continued employment is contingent upon the results of a criminal history
 3 check and that the employee has the right to obtain a copy of the report from
 4 the bureau and the right to obtain a copy of the central registry report from
 5 the registries.

6 ~~(f)~~(g) A state agency shall discharge from employment in a designated
 7 position any person who has pleaded guilty or nolo contendere to or been found
 8 guilty of any of the following offenses by any court in the State of Arkansas
 9 or of any similar offense by a federal court in another state or of any
 10 similar offense by a federal court, but only after an opportunity for a
 11 hearing conducted in accordance with the Arkansas Administrative Procedure
 12 Act, § 25-15-201 et seq.:

- 13 (1) Capital murder, as prohibited in § 5-10-101;
- 14 (2) Murder in the first degree and second degree, as prohibited
 15 in §§ 5-10-102 and 5-10-103;
- 16 (3) Manslaughter, as prohibited in § 5-10-104;
- 17 (4) Negligent homicide, as prohibited in § 5-10-105;
- 18 (5) Kidnapping, as prohibited in § 5-11-102;
- 19 (6) False imprisonment in the first degree, as prohibited in § 5-
 20 11-103;
- 21 (7) Permanent detention or restraint, as prohibited in § 5-11-
 22 106;
- 23 (8) Robbery, as prohibited in § 5-12-102;
- 24 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 25 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 26 (11) Aggravated assault, as prohibited in § 5-13-204;
- 27 (12) Introduction of controlled substance into body of another
 28 person, as prohibited in § 5-13-210;
- 29 (13) Terroristic threatening in the first degree, as prohibited
 30 in § 5-13-301;
- 31 (14) Rape and carnal abuse in the first degree, second degree,
 32 and third degree, as prohibited in §§ 5-14-103 - 5-14-106;
- 33 (15) Sexual abuse in the first degree and second degree, as
 34 prohibited in §§ 5-14-108 and 5-14-109;
- 35 (16) Sexual solicitation of a child, as prohibited in § 5-14-110;
- 36 (17) Violation of a minor in the first degree and second degree,

- 1 as prohibited in §§ 5-14-120 and 5-14-121;
- 2 (18) Incest, as prohibited in § 5-26-202;
- 3 (19) Offenses against the family, as prohibited in §§ 5-26-303 -
4 5-26-306;
- 5 (20) Endangering the welfare of an incompetent person in the
6 first degree, as prohibited in § 5-27-201;
- 7 (21) Endangering the welfare of a minor in the first degree, as
8 prohibited in § 5-27-203;
- 9 (22) Permitting child abuse, as prohibited in subdivisions (a)(1)
10 and (a)(3) of § 5-27-221;
- 11 (23) Engaging children in sexually explicit conduct for use in
12 visual or print media, transportation of minors for prohibited sexual conduct,
13 pandering or possessing visual or print medium depicting sexually explicit
14 conduct involving a child, or the use of a child or consent to the use of a
15 child in a sexual performance by producing, directing, or promoting a sexual
16 performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-
17 27-402, and 5-27-403;
- 18 (24) Felony adult abuse, as prohibited in § 5-28-103;
- 19 (25) Theft of property, as prohibited in § 5-36-103;
- 20 (26) Theft by receiving, as prohibited in § 5-36-106;
- 21 (27) Arson, as prohibited in § 5-38-301;
- 22 (28) Burglary, as prohibited in § 5-39-201;
- 23 (29) Felony violation of the Uniform Controlled Substances Act,
24 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- 25 (30) Promotion of prostitution in the first degree, as prohibited
26 in § 5-70-104;
- 27 (31) Stalking, as prohibited in § 5-71-229; and
- 28 (32) Criminal attempt, criminal complicity, criminal
29 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-
30 3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

31

32 SECTION 4. Arkansas Code 21-15-104(a) and (b), concerning waivers of the
33 requirement to exclude applicants or discharge employees based on background
34 checks, is amended to read as follows:

35 (a) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-103(e),
36 ~~and 21-15-103(f)(g)~~, and 21-15-110(b) may be waived by the director of a state

1 agency upon the request of:

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

4 (2) An affected applicant for employment; or

5 (3) The person subject to discharge.

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

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

9 (2) The circumstances surrounding the crime or act;

10 (3) The length of time since the crime or act;

11 (4) Subsequent work history;

12 (5) Employment references;

13 (6) Character references; and

14 (7) Other evidence demonstrating that the applicant or employee
15 does not pose a threat to the health or safety of children or other clients of
16 the state agency.

17

18 SECTION 5. Arkansas Code Annotated 21-15-105(a), concerning
19 confidentiality of background checks, is amended to read as follows:

20 (a) Any information received by a state agency from the Identification
21 Bureau of the Department of Arkansas State Police or from a central registry
22 check pursuant to this subchapter shall not be available for examination
23 except by the affected applicant for employment or his authorized
24 representative, and no record, file, or document shall be removed from the
25 custody of the department.

26

27 SECTION 6. Arkansas Code 21-15-106(b), concerning rules and regulations
28 for background checks, is amended as follows:

29 (b) Each state agency shall maintain on file, subject to inspection by
30 the Arkansas Crime Information Center, ~~or~~ the Identification Bureau of the
31 Department of Arkansas State Police, or the Child Maltreatment Central
32 Registry, the Adult Abuse Central Registry, or the Certified Nursing
33 Assistant/Employment Clearance Registry evidence that criminal history central
34 registry checks required by this subchapter have been initiated on all
35 applicants and employees.

36

1 SECTION 7. Arkansas Code 21-15-107 is amended as follows:

2 21-15-107. Duty of bureau and the Child Maltreatment Central Registry,
3 the Adult Abuse Central Registry and the Certified Nursing
4 Assistant/Employment Clearance Registry.

5 (a)(1) After receipt of a request for a criminal history check, the
6 Identification Bureau of the Department of Arkansas State Police shall make
7 reasonable efforts to respond to requests for state criminal history checks
8 within twenty (20) calendar days and to respond to requests for national
9 criminal history checks within ten (10) calendar days after the receipt of a
10 national criminal history check from the Federal Bureau of Investigation.

11 (2) After receipt of a request for a central registry check, the
12 registry shall make reasonable efforts to respond to requests within twenty
13 (20) calendar days.

14 (b)(1) Upon completion of a criminal history check, the Identification
15 Bureau of the Department of Arkansas State Police shall forward all
16 information obtained concerning the applicant or employee to the Arkansas
17 Crime Information Center.

18 (2) Upon completion of a central registry check, the registry
19 shall forward all information obtained concerning the applicant or employee to
20 the requesting state agency.

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

26 (d)(1) The Identification Bureau of the Department of Arkansas State
27 Police shall develop a form to be used for criminal history checks conducted
28 under this subchapter. The form shall require the notarized signature of the
29 person who is the subject of the check.

30 (2) The Child Maltreatment Central Registry, the Adult Abuse
31 Central Registry and the Certified Nursing Assistant/Employment Clearance
32 Registry shall work together to develop a form to be used for central registry
33 checks conducted under this subchapter. The form shall require the notarized
34 signature of the person who is the subject of the check.

35
36 SECTION 8. Arkansas Code Title 21, Chapter 15, Subchapter 1, is amended

1 to add the following new section:

2 21-15-110. (a) If a state employee is determined to be an offender or
3 perpetrator in a true, substantiated, or founded report of child maltreatment
4 or adult abuse and the state employee is employed in a designated position,
5 the investigating agency shall immediately notify the employer of that state
6 employee.

7 (b) The employer shall immediately discharge the employee.

8 */s/ J. Elliott*

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