

**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

# A Bill

HOUSE BILL 1854

5 By: Representative Cook  
6 By: Senator Mahony  
7

## For An Act To Be Entitled

10 AN ACT TO AMEND THE CRIMINAL BACKGROUND CHECK  
11 REQUIREMENTS TO MAKE THE CRITERIA FOR NEW LICENSE  
12 ISSUANCE THE SAME AS THAT FOR LICENSE RENEWAL; AND  
13 FOR OTHER PURPOSES.

## Subtitle

14  
15 AN ACT TO AMEND THE CRIMINAL BACKGROUND  
16 CHECK REQUIREMENTS TO MAKE THE CRITERIA  
17 FOR NEW LICENSE ISSUANCE THE SAME AS  
18 THAT FOR LICENSE RENEWAL.  
19

20  
21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code 6-17-410 is amended to read as follows:

25 6-17-410. ~~First-time applicants and applicants for license renewal.~~

26 Teacher licensure - First-time applicant, renewal application,  
27 revocation, suspension, and probation.

28 (a)(1)(A)(i) Each first-time applicant for a license issued by the  
29 State Board of Education and each applicant for his or her first license  
30 renewal on or after July 1, 1997, shall be required to apply to the Bureau of  
31 Identification and Information for a statewide and nationwide criminal  
32 records check, to be conducted by the Federal Bureau of Investigation.

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

35 (B) The applicant shall sign a release of information to  
36 the Department of Education and shall be responsible to the Department of

1 Arkansas State Police for the payment of any fee associated with the criminal  
2 records check.

3 (C)(i) The Department of Education shall be responsible to  
4 the Department of Arkansas State Police for the payment of any fee associated  
5 with the criminal records check at the time of license renewal for employees  
6 of Arkansas public school districts, employees of other public education  
7 institutions located in Arkansas, and employees of the Department of  
8 Education.

9 (ii) Funding for the fees shall come from the Public  
10 School Fund.

11 (2) Upon completion of the criminal records check, the Bureau of  
12 Identification and Information shall forward all information obtained  
13 concerning the applicant in the commission of any offense listed in  
14 subsection (c) of this section to the Department of Education.

15 (3) At the conclusion of any background check required by this  
16 subsection (a), the Bureau of Identification and Information shall promptly  
17 destroy the fingerprint card of the applicant.

18 (b)(1) The board is authorized to issue a six-month nonrenewable  
19 letter of provisional eligibility for licensure to a first-time applicant  
20 pending the results of the criminal records check; provided, however, the  
21 Director of the Department of Education is authorized to extend the period of  
22 provisional eligibility to the end of that contract year if:

23 (A) The applicant is employed by a local school district;  
24 and

25 (B) The results of the criminal records check are delayed.

26 (2) Upon receipt of information from the Bureau of  
27 Identification and Information that the person holding a letter of  
28 provisional eligibility for licensure has pleaded guilty or nolo contendere  
29 to or has been found guilty of any offense listed in subsection (c) of this  
30 section, the board shall immediately revoke the provisional eligibility.

31 (c) ~~No person shall be eligible to receive or hold a license issued by~~  
32 ~~the board if that~~ The State Board of Education shall not issue a first-time  
33 license or renew an existing license and shall revoke any existing license  
34 not up for renewal of any person who has pleaded guilty or nolo contendere to  
35 or has been found guilty of any of the following offenses by any court in the  
36 State of Arkansas or of any similar offense by a court in another state or of

1 any similar offense by a federal court, but only after an opportunity for a  
2 hearing before the board upon reasonable notice in writing:

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

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

6 (3) Manslaughter, as prohibited in § 5-10-104;

7 (4) Battery in the first degree and second degree, as prohibited  
8 in §§ 5-13-201 and 5-13-202;

9 (5) Aggravated assault, as prohibited in § 5-13-204;

10 (6) Terroristic threatening in the first degree, as prohibited  
11 in § 5-13-301;

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

13 (8) Rape and carnal abuse in the first degree and second degree,  
14 as prohibited in §§ 5-14-103 - 5-14-105;

15 (9) Sexual abuse in the first degree and second degree, as  
16 prohibited in §§ 5-14-108 and 5-14-109;

17 (10) Violation of a minor in the first degree and second degree,  
18 as prohibited in §§ 5-14-120 and 5-14-121;

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

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

25 (13) Distribution to minors, as prohibited in § 5-64-406;

26 (14) The manufacture, delivery, or possession with intent to  
27 manufacture or deliver any controlled substance, as prohibited in § 5-64-401;

28 (15) Carnal abuse in the third degree, as prohibited in § 5-14-  
29 106;

30 (16) Sexual solicitation of a child, as prohibited in § 5-14-

31 110; (17) Endangering the welfare of a minor in the first  
32 degree, as prohibited in § 5-27-203;

33 (18) Pandering or possessing visual or print medium depicting  
34 sexually explicit conduct involving a child, as prohibited by § 5-27-304;

35 (19) False imprisonment in the first degree, as prohibited in §  
36 5-11-103;

1 (20) Permanent detention or restraint, as prohibited in § 5-11-  
2 106;

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

5 (22) Negligent homicide, as prohibited by § 5-10-105(a);

6 (23) Assault in the first degree, as prohibited by § 5-13-205;

7 (24) Coercion, as prohibited by § 5-13-208;

8 (25) Sexual misconduct, as prohibited by § 5-14-107;

9 (26) Public sexual indecency, as prohibited by § 5-14-111;

10 (27) Indecent exposure, as prohibited by § 5-14-112;

11 (28) Endangering the welfare of a minor in the second degree, as  
12 prohibited by § 5-27-204; and

13 (29) Criminal attempt, criminal solicitation, or criminal  
14 conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to  
15 commit any of the offenses listed in this subsection (c).

16 (d)(1) The revocation provisions of subsection (c) ~~of this section and~~  
17 ~~those of § 6-17-405(a)~~ may be waived by the board upon request by:

- 18 (A) The board of a local school district;
- 19 (B) An affected applicant for licensure; or
- 20 (C) The person holding a license subject to revocation.

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

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

30 not pose a threat to the health or safety of school children or school  
31 personnel.

32 (e)(1) For cause as set forth in subdivision (e)(2) of this  
33 subsection, the board shall revoke, suspend, or place on probation the  
34 license of any person, but only after an opportunity for a hearing before the  
35 board upon reasonable written notice of the cause to be considered, and if a  
36 written request for a hearing is received by the State Board of Education no

1 less than thirty (30) days after the notice of the cause is received by the  
2 person holding the license.

3 (2) For the purposes of this subsection, "cause" means any of  
4 the following:

5 (A) Pleading guilty or nolo contendere to, or being found  
6 guilty of, a felony not listed in subsection (c) of this section;

7 (B) Pleading guilty or nolo contendere to, or being found  
8 guilty of, a nonfelony negligent homicide or a misdemeanor involving physical  
9 mistreatment or abuse against a child and not listed in subsection (c) of  
10 this section;

11 (C) Holding a license obtained by fraudulent means;

12 (D) Revocation of a license in another state;

13 (E) Intentionally compromising the validity or security of  
14 any student test or testing program administered by or required by the State  
15 Board of Education or the Department of Education;

16 (F) Having the completed examination test score of any  
17 testing program required by the State Board of Education for teacher  
18 licensure declared invalid by the testing program company and so reported to  
19 the Department of Education by the testing company;

20 (G) Having an expunged or pardoned conviction for any  
21 sexual or physical abuse offense committed against a child; or

22 (H) Failing to establish or maintain the necessary  
23 requirements and standards set forth in Arkansas law or State Board of  
24 Education rules and regulations for teacher licensure.

25 (3) For purposes of this subsection, "child" means a person  
26 enrolled in the public schools of the State of Arkansas.

27 (f)(1) The superintendent of each school district shall report to the  
28 board the name of any person holding a license issued by the board and  
29 currently employed or employed during the two (2) previous school years by  
30 the local school district who:

31 (A) Has pleaded guilty or nolo contendere to, or been  
32 found guilty of, a felony or any misdemeanor listed in subsection (a) of this  
33 section;

34 (B) Holds a license obtained by fraudulent means;

35 (C) Has had a similar license revoked in another state;

36 (D) Has intentionally compromised the validity or security

1 of any student test or testing program administered or required by the  
2 Department of Education;

3 (E) Has knowingly submitted falsified information  
4 requested or required by the Department of Education; or

5 (F)(i) Has failed to establish or maintain the necessary  
6 requirements and standards set forth in Arkansas law or Department of  
7 Education rules and regulations for teacher licensure.

8 (ii) Failure of a superintendent to report  
9 information as required by this subsection (f) may result in sanctions  
10 imposed by the board.

11 (g) For cause as stated in subsection (e) of this section, the board  
12 is authorized to:

13 (1) Revoke a license permanently;

14 (2) Suspend a license for a terminable period of time or  
15 indefinitely;

16 (3) Place a person on probationary status for a terminable  
17 period of time, with the license to be revoked or suspended if the  
18 probationary period is not successfully completed; or

19 (4) Accept voluntary surrender of a license.

20 (h) Upon notice in writing that a revocation, suspension, or probation  
21 is being sought by the board for a cause set forth, a person may:

22 (1) Voluntarily surrender the license;

23 (2) Decline to answer the notice, in which case a hearing will  
24 be held before the board to establish by a preponderance of the evidence that  
25 cause for the proposed action exists;

26 (3) Contest the complaint, in which case the person shall be  
27 given an evidentiary hearing before the board if one is requested;

28 (4) Admit the allegations of fact and request an informal  
29 hearing before the board in mitigation of any penalty which may be assessed;  
30 or

31 (5) Stipulate or reach a negotiated agreement, which must be  
32 approved by the board.

33 ~~(e)(1)(i)(1)~~ (1) Any information received by the Department of Education  
34 from the Bureau of Identification and Information pursuant to subsection (a)  
35 of this section shall not be available for examination except by the affected  
36 applicant for licensure or his duly authorized representative, and no record,

1 file, or document shall be removed from the custody of the department.

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

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

8 ~~(f)~~(j) The board shall adopt the necessary rules and regulations to  
9 fully implement the provisions of this section.

10

11 SECTION 2. Arkansas Code 6-17-405 is repealed:

12 ~~6-17-405.—License revocation generally.—~~

13 ~~(a)—The State Board of Education shall revoke the license of any  
14 person who has pleaded guilty or nolo contendere to or has been found guilty  
15 of any of the following offenses by any court in the State of Arkansas or of  
16 any similar offense by a court in another state or of any similar offense by  
17 a federal court, but only after an opportunity for a hearing before the board  
18 upon reasonable notice in writing:—~~

19 ~~(1)—Capital murder, as prohibited in § 5-10-101;—~~

20 ~~(2)—Murder in the first degree and second degree, as prohibited  
21 in §§ 5-10-102 and 5-10-103;—~~

22 ~~(3)—Manslaughter, as prohibited in § 5-10-104;—~~

23 ~~(4)—Battery in the first degree and second degree, as prohibited  
24 in §§ 5-13-201 and 5-13-202;—~~

25 ~~(5)—Aggravated assault, as prohibited in § 5-13-204;—~~

26 ~~(6)—Terroristic threatening in the first degree, as prohibited  
27 in § 5-13-301;—~~

28 ~~(7)—Kidnapping, as prohibited in § 5-11-102;—~~

29 ~~(8)—Rape and carnal abuse in the first degree and second degree,  
30 as prohibited in §§ 5-14-103—5-14-105;—~~

31 ~~(9)—Sexual abuse in the first degree and second degree, as  
32 prohibited in §§ 5-14-108 and 5-14-109;—~~

33 ~~(10)—Violation of a minor in the first degree and second degree,  
34 as prohibited in §§ 5-14-120 and 5-14-121;—~~

35 ~~(11)—Incest, as prohibited in § 5-26-202;—~~

36 ~~(12)—Engaging children in sexually explicit conduct for use in~~

1 ~~visual or print media, transportation of minors for prohibited sexual~~  
2 ~~conduct, or use of a child or consent to use of a child in a sexual~~  
3 ~~performance by producing, directing, or promoting a sexual performance by a~~  
4 ~~child, as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

5 ~~(13) Distribution to minors, as prohibited in § 5-64-406;~~

6 ~~(14) The manufacture, delivery, or possession with intent to~~  
7 ~~manufacture or deliver any controlled substance, as prohibited in § 5-64-401;~~

8 ~~(15) Carnal abuse in the third degree, as prohibited in § 5-14-~~  
9 ~~106;~~

10 ~~(16) Sexual solicitation of a child, as prohibited in § 5-14-~~

11 ~~110;~~ ~~(17) Endangering the welfare of a minor in the first degree, as~~  
12 ~~prohibited in § 5-27-203;~~

13 ~~(18) Pandering or possessing visual or print medium depicting~~  
14 ~~sexually explicit conduct involving a child, as prohibited by § 5-27-304;~~

15 ~~(19) False imprisonment in the first degree, as prohibited in §~~  
16 ~~5-11-103;~~

17 ~~(20) Permanent detention or restraint, as prohibited in § 5-11-~~  
18 ~~106;~~

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

21 ~~(22) Negligent homicide, as prohibited by § 5-10-105(a);~~

22 ~~(23) Assault in the first degree, as prohibited by § 5-13-205;~~

23 ~~(24) Coercion, as prohibited by § 5-13-208;~~

24 ~~(25) Sexual misconduct, as prohibited by § 5-14-107;~~

25 ~~(26) Public sexual indecency, as prohibited by § 5-14-111;~~

26 ~~(27) Indecent exposure, as prohibited by § 5-14-112;~~

27 ~~(28) Endangering the welfare of a minor in the second degree, as~~  
28 ~~prohibited by § 5-27-204; and~~

29 ~~(29) Criminal attempt, criminal solicitation, or criminal~~  
30 ~~conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to~~  
31 ~~commit any of the offenses listed in this subsection (a).~~

32 ~~(b)(1) The board may revoke or suspend the license of any person~~  
33 ~~holding a license for cause but only after an opportunity for a hearing~~  
34 ~~before the board upon reasonable notice in writing of the cause to be~~  
35 ~~considered.~~

36 ~~(2) "Cause", for the purposes of this subsection (b), means any~~



1 of the following:-

2 (A) ~~—Pleading guilty or nolo contendere to or being found~~  
3 ~~guilty of a felony not listed in subsection (a) of this section;-~~

4 (B) ~~—Pleading guilty or nolo contendere to or being found~~  
5 ~~guilty of a nonfelony negligent homicide or a misdemeanor involving physical~~  
6 ~~mistreatment or abuse against a child and not listed in subsection (a) of~~  
7 ~~this section;-~~

8 (C) ~~—Holding a license obtained by fraudulent means;-~~

9 (D) ~~—Revocation of a license in another state;-~~

10 (E) ~~—Intentionally compromising the validity or security of~~  
11 ~~any student test or testing program administered by or required by the~~  
12 ~~Department of Education;-~~

13 (F) ~~—Knowingly submitting, through the superintendent or~~  
14 ~~directly to the department, falsified information which is requested or~~  
15 ~~required by the department; or~~

16 (G) ~~—Having an expunged conviction for any sexual offense~~  
17 ~~committed against a child.-~~

18 (3) ~~—For purposes of this subsection (b), "child" means a person~~  
19 ~~enrolled in the public schools of the State of Arkansas.-~~

20 (c)(1) ~~—The superintendent of each school district shall report to the~~  
21 ~~state board the name of any person holding a license issued by the board and~~  
22 ~~currently employed or employed during the two (2) previous school years by~~  
23 ~~the local school district who:-~~

24 (A) ~~—Has pleaded guilty or nolo contendere to or has been~~  
25 ~~found guilty of a felony or any misdemeanor listed in subsection (a) of this~~  
26 ~~section;-~~

27 (B) ~~—Holds a license obtained by fraudulent means;-~~

28 (C) ~~—Has had a similar license revoked in another state;-~~

29 (D) ~~—Has intentionally compromised the validity or security~~  
30 ~~of any student test or testing program administered or required by the~~  
31 ~~department; or~~

32 (E) ~~—Has knowingly submitted falsified information~~  
33 ~~requested or required by the department.-~~

34 (2) ~~—Failure of a superintendent to report information as~~  
35 ~~required by this subsection (c) may result in sanctions imposed by the board.-~~

36

1           ~~(d) For cause as stated above, the board is authorized to:~~

2                   ~~(1) Revoke a license permanently;~~

3                   ~~(2) Suspend a license for a terminable period of time;~~

4                   ~~(3) Place a person on probationary status for a terminable~~  
5 ~~period of time, with the license to be revoked or suspended if the~~  
6 ~~probationary period is not successfully completed; or~~

7                   ~~(4) Accept voluntary surrender of a license.~~

8           ~~(e) Upon notice in writing that a revocation, suspension, or probation~~  
9 ~~is being sought by the board for a cause set forth herein, a person may:~~

10                   ~~(1) Voluntarily surrender the license;~~

11                   ~~(2) Decline to answer the notice, in which case a hearing will~~  
12 ~~be held before the board to establish by a preponderance of the evidence that~~  
13 ~~cause for the proposed action exists;~~

14                   ~~(3) Contest the complaint, in which case the person shall be~~  
15 ~~given an evidentiary hearing before the board if one is requested;~~

16                   ~~(4) Admit the allegations of fact and request an informal~~  
17 ~~hearing before the board in mitigation of any penalty which may be assessed;~~  
18 ~~or~~

19                   ~~(5) Stipulate or reach a negotiated agreement, which must be~~  
20 ~~approved by the board.~~

21           ~~(f) The board shall adopt the necessary rules and regulations to fully~~  
22 ~~implement the provisions of this section.~~

23  
24           SECTION 3. Arkansas Code 17-1-103 is amended to add an additional  
25 subsection to read as follows:

26           (i) This section shall not apply to teacher licensure or  
27 certification, as these areas of licensure or certification are specifically  
28 governed by § 6-17-410.

29  
30  
31  
32  
33  
34  
35  
36