

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 *As Engrossed: H3/3/03 H3/20/03 H3/24/03 H3/27/03*

2 84th General Assembly

A Bill

3 Regular Session, 2003

HOUSE BILL 1488

4

5 By: Representatives Mahony, *Thomason*

6 By: Senator Broadway

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For An Act To Be Entitled

10 AN ACT TO ALLOW THE ARKANSAS CRIME INFORMATION
11 CENTER AND THE ARKANSAS STATE POLICE TO RELEASE
12 CERTAIN CRIMINAL HISTORY INFORMATION FOR A FEE;
13 AND FOR OTHER PURPOSES.

14

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Subtitle

16 AN ACT TO ALLOW THE ARKANSAS CRIME
17 INFORMATION CENTER AND THE ARKANSAS
18 STATE POLICE TO RELEASE CERTAIN CRIMINAL
19 HISTORY INFORMATION FOR A FEE.

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

23

24 SECTION 1. Title.

25 This act shall be known as the "Arkansas State Criminal Records Act".

26

27 SECTION 2. Intent.

28 (a) It is the intent of this act to provide one source for obtaining
29 the most accurate and complete criminal history information.

30 (b) The Arkansas State Police shall be the agency responsible for the
31 dissemination of criminal history information under this act.

32 (c) The Arkansas Crime Information Center shall be authorized to
33 disseminate criminal history information as authorized by law.

34 (d) It is the intent of this act to allow dissemination of criminal
35 history information to employers and professional licensing boards pertaining
36 to all felony arrest information and all conviction information.



1 SECTION 3. Definitions.

2 For purposes of this act:

3 (1) "Administration of criminal justice" means performing functions of
4 investigation, apprehension, detention, prosecution, adjudication,
5 correctional supervision, or rehabilitation of accused persons or criminal
6 offenders, including criminal identification activities and the collection,
7 maintenance, and dissemination of criminal justice information;

8 (2) "Arrest records" means felony arrest information where conviction
9 or disposition information has not been entered into the central repository;

10 (3) "Central repository" means the Arkansas Crime Information Center,
11 which collects, maintains and disseminates criminal history information;

12 (4)(A) "Conviction information" means criminal history information
13 disclosing that a person has pleaded guilty or nolo contendere to, or was
14 found guilty of, a criminal offense in a court of law, together with
15 sentencing information;

16 (B) Sealed or expunged records are not included in the
17 definition of "conviction information";

18 (5)(A) "Criminal history information" means:

19 (i) A record compiled by the central repository or the
20 Identification Bureau of the Department of Arkansas State Police on an
21 individual consisting of names, identification data, notations of arrests,
22 detentions, indictments, informations, or other formal criminal charges
23 obtained from criminal justice agencies, including any dispositions of the
24 charges, as well as notations on correctional supervision and release;

25 (ii) Fingerprint records on individuals not involved in
26 the criminal justice system, juvenile records or driver history records are
27 not included in the definition of "criminal history information";

28 (iii) Original records of entry maintained by criminal
29 justice agencies, court indices, records of public judicial proceedings,
30 court decisions, opinions, and information disclosed during public judicial
31 proceedings are not included in the definition of criminal history
32 information.

33 (B) When the release is made by the specific court, law
34 enforcement agency, or prosecutor that created the records, the records are
35 not included in the definition of "criminal history information".

36 (C)(i) This subdivision (5) does not prohibit the release of

1 information by the specific agency that created the record.

2 (6) "Criminal justice agency" means a government agency or any
3 subunit thereof which is authorized by law to perform the administration of
4 criminal justice and which allocates more than one-half (1/2) its annual
5 budget to the administration of criminal justice;

6 (7)(A) "Disposition" means information describing the outcome of
7 any criminal charges, including notations that law enforcement officials have
8 elected not to refer the matter to a prosecutor, that a prosecutor has
9 elected not to begin criminal proceedings, or that proceedings have been
10 indefinitely postponed;

11 (B) "Dispositions" includes acquittals, dismissals, probations,
12 charges pending due to mental disease or defect, guilty pleas, nolle
13 prosequi, nolo contendere pleas, findings of guilt, youthful offender
14 determinations, first offender programs, pardons, commuted sentences,
15 mistrials in which the defendant is discharged, executive clemencies,
16 paroles, releases from correctional supervision, deaths, or a finding that
17 the person must register as a sex offender;

18 (8) "Dissemination" means disclosing criminal history information or
19 disclosing the absence of criminal history information to any agency,
20 professional licensing board, business designated by state or federal law, or
21 any other employer legally doing business in and paying taxes to the State of
22 Arkansas who has applied and been approved by the Department of Arkansas
23 State Police to receive the information, subject to the following exceptions:

24 (A) When criminal justice agencies jointly participate in the
25 maintenance of a single record keeping system as an alternative to
26 maintaining separate records, the furnishing of information by that
27 department to personnel of a participating agency is not a dissemination; and

28 (B) The furnishing of information by any criminal justice agency
29 to another for the purpose of the administration of criminal justice;

30 (9) "Identification Bureau" means the Identification Bureau of the
31 Department of the Arkansas State Police, which may maintain fingerprint card
32 files and other identification information on individuals;

33 (9)(A) "Nonconviction information" means arrests where disposition was
34 by acquittal, dismissal, nolle prosequi, or mistrial, in which the defendant
35 was discharged;

36 (B) "Nonconviction information" does not include sealed

1 ,expunged or juvenile records;

2 (11) "Pending information" means felony criminal history information
3 in some stage of active prosecution or processing; and

4 (12) "Seal" or "Expunge" means that the record or records in question
5 shall be sealed, sequestered, and treated as confidential as provided by law,
6 including pardons issued by the Governor.

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8 SECTION 4. Information required - Exceptions.

9 (a) The Department of Arkansas State Police and the Arkansas Crime
10 Information Center shall disseminate criminal history information pertaining
11 to any felony arrest, detention, indictment, information, or other formal
12 felony criminal charge to the extent entries have been made at the time of
13 the request for the information.

14 (b) Any event, activity, or any portion of the criminal history
15 information which has not been processed by the Arkansas State Police or the
16 Arkansas Crime Information Center shall not be required to be included in the
17 dissemination.

18 (c) Requests for information, supporting documents, and any responses
19 are not subject to disclosure under the Arkansas Freedom of Information Act,
20 § 25-19-101 et seq.

21 (d) This act shall not effect any record or information that may be
22 accessed by the public under the Freedom of Information Act of 1967, §§ 25-
23 19-101 et seq.

24
25 SECTION 5. Disposition data to the central repository.

26 (a) Criminal history information shall be submitted to the central
27 repository as required under § 12-12-1007.

28 (b) The central repository shall enter these disposition records.

29 (c) Criminal history information provided to the central repository
30 or, the Arkansas State Police, shall not be subject to disclosure under the
31 Arkansas Freedom of Information Act, § 25-19-101 et seq.

32
33 SECTION 6. Unrestricted information - Records.

34 (a) All conviction information and felony arrest records may be
35 disseminated as provided for in this act.

36 (b) Any criminal history information of felony arrest records and all

1 conviction information which pertains to a person currently being processed
2 by the criminal justice system, including the entire period of correctional
3 supervision extending through final discharge from parole, may be
4 disseminated without restriction.

5 (c)(1) The Identification Bureau of the Department of Arkansas State
6 Police, the Arkansas Crime Information Center, or a third party shall be
7 responsible for the maintenance of information pertaining to dissemination of
8 criminal history information.

9 (2) The information pertaining to dissemination required to be
10 maintained shall be retained for a period of not less than three (3) years,
11 for security purposes.

12 (d)(1) Each employer or professional licensing board that is allowed
13 access to records under this act shall maintain in their files the written
14 consent to obtain the criminal history information given by the applicant or
15 employee.

16 (2) Those files and consent forms shall be subject to inspection
17 by the Department of the Arkansas State Police.”

18 (e) This section allows the dissemination of information concerning
19 persons who are required to register as sex offenders.

20 (f) Criminal justice agencies, its employees, and officials shall be
21 immune from civil liability for dissemination of criminal history information
22 under this act.

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24 SECTION 7. Administration.

25 (a)(1) Release of criminal history information under this act shall
26 only be made by the Identification Bureau of the Department of the Arkansas
27 State Police and the Arkansas Crime Information Center as authorized by law.

28 (2) The Department of Arkansas State Police and the Arkansas Crime
29 Information Center shall adopt rules and regulations consistent with the
30 provisions and intent of this act.

31 (b) The Department of Arkansas State Police and the Arkansas Crime
32 Information Center are authorized to contract with Information Network of
33 Arkansas under §§ 25-27-101 through 25-27-105 or any other qualified third
34 party vendor in the establishment of the gateway or means of processing these
35 transactions electronically.

36 (c) The Department of Arkansas State Police shall be authorized to

1 establish and collect reasonable fees for the service of fingerprinting
2 persons upon their request for noncustodial arrest purposes.

3
4 SECTION 8. Access.

5 (a) Criminal history information or requestor information collected
6 and maintained under this act is not considered public record information for
7 dissemination within the intent and meaning of the Arkansas Freedom of
8 Information Act, § 25-19-101 et seq.

9 (b) A fee for providing criminal history information will be charged
10 for each criminal history information requested.

11
12 SECTION 9. Right of review and challenge.

13 (a)(1) A person may review and challenge their criminal history
14 information under § 12-12-1013.

15 (2) No fee shall be charged for review or challenge of criminal
16 history information.

17 (b)(1) A person may go to any law enforcement agency, provide positive
18 verification of his or her identity, be fingerprinted by the law enforcement
19 agency and supply written details of the errors in the criminal history
20 information.

21 (2) The local law enforcement agency must send the fingerprint
22 card and information directly to the Arkansas State Police Identification
23 Bureau.

24 (3) The law enforcement agency shall verify that the
25 identification of the person and the fingerprint card information are
26 correct.

27 (4) There is no charge from the Department of Arkansas State
28 Police or the Arkansas Crime Information Center for this review process.

29 (c)(1) A person upon positive verification of his or her identity may
30 review any requestor information pertaining to such person compiled and
31 maintained through the Department of Arkansas State Police or its designee.

32 (2) No fee shall be charged for this access.

33
34 SECTION 10. Fees.

35 (a)(1) A fee may be charged for providing criminal history information
36 under this act.

1 (2) The amount of the fee will be determined jointly by the
2 Department of Arkansas State Police and the Arkansas Crime Information Center
3 and shall not exceed *twenty dollars (\$20.00)*, exclusive of any third party
4 electronic processing fee charges.

5 (3)(A) The fees shall be credited fifty percent (50%) to the
6 Crime Information System Fund and fifty percent (50%) to the State Police
7 Equipment Fund.

8 (B) The Arkansas Crime Information Center may utilize
9 these funds for the operation or expansion of the automated criminal justice
10 information system, subject to legislative appropriations.

11 (C) The Department of Arkansas State Police may utilize
12 these funds for the operation, expansion, and integration of the Automated
13 Fingerprint Identification System, which includes components and software to
14 support a total integrated solution associated with the Automated Fingerprint
15 Identification System.

16 (4) Special revenues deposited in the Crime Information System Fund
17 and the State Police Equipment Fund may be used for personal services and
18 operating expenses as provided by law, and any special revenues unused at the
19 end of any fiscal year shall be carried forward.

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21 SECTION 11. Penalty

22 (a) Any person who shall knowingly release or disclose to any
23 unauthorized person any information collected and maintained under this act,
24 and any person who knowingly obtains such information for purposes not
25 authorized by this act, shall be deemed guilty of a Class A misdemeanor.

26 (b) The Department of Arkansas State Police and the Arkansas Crime
27 Information Center shall have the power to promulgate rules and regulations
28 as are necessary to implement, enforce and administer this act.

29
30 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that the dissemination of complete,
32 accurate, and timely criminal history information is necessary for the
33 protection of the people of the State of Arkansas and this act is needed to
34 provide that necessary access to the criminal history information.
35 Therefore, an emergency is declared to exist and this act being immediately
36 necessary for the preservation of the public peace, health, and safety shall

1 become effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,
4 the expiration of the period of time during which the Governor may veto the
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is
7 overridden, the date the last house overrides the veto.

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/s/ Mahony

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