

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 S4/15/03

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)(1) 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 (2) Felony arrest information that has had a disposition of
2 acquittal, dismissal, or nolle prosequi entered into the Central Repository
3 will not be released under this act.

4
5 SECTION 3. Definitions.

6 For purposes of this act:

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

12 (2)(A) "Arrest records or arrest information" means felony arrest
13 information where conviction or disposition information has not been entered
14 into the central repository;

15 (B) This term does not include misdemeanor arrest
16 information or felony arrest information that has a disposition of acquittal,
17 dismissal or nolle prosequi entered into the Central Repository.

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

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

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

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

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

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

36 (iii) Original records of entry maintained by criminal

1 justice agencies, court indices, records of public judicial proceedings,
2 court decisions, opinions, and information disclosed during public judicial
3 proceedings are not included in the definition of criminal history
4 information.

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

8 (C)(i) This subdivision (5) does not prohibit the release of
9 information by the specific agency that created the record.

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

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

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

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

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

36 (B) The furnishing of information by any criminal justice agency

1 to another for the purpose of the administration of criminal justice;

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

5 (10) "Pending information" means felony criminal history information
6 in some stage of active prosecution or processing;

7 (11) "Requestor" means the employer or professional licensing board
8 that has submitted an inquiry into a subject's criminal history information
9 under this act; and

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

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14 SECTION 4. Information required - Exceptions.

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

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

24 (c) Requests for information, supporting documents, and any responses
25 are not subject to disclosure under the Arkansas Freedom of Information Act,
26 § 25-19-101 et seq.

27 (d) This act shall not effect any record or information that may be
28 accessed by the public under the Freedom of Information Act of 1967, §§ 25-
29 19-101 et seq.

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31 SECTION 5. Disposition data to the central repository.

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

34 (b) The central repository shall enter these disposition records in an
35 expeditious manner.

36 (c) Criminal history information provided to the central repository

1 or, the Arkansas State Police, shall not be subject to disclosure under the
2 Arkansas Freedom of Information Act, § 25-19-101 et seq.

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4 SECTION 6. Unrestricted information - Records.

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

7 (b) Any criminal history information of felony arrest records and all
8 conviction information which pertains to a person currently being processed
9 by the criminal justice system, including the entire period of correctional
10 supervision extending through final discharge from parole, may be
11 disseminated without restriction.

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

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

19 (d)(1)(A) Each employer or professional licensing board that is
20 allowed access to criminal history information under this act, shall maintain
21 in its files the written consent to obtain the criminal history information
22 given by the applicant or employee.

23 (B) Any employer or professional licensing board who is
24 granted access to criminal history information under this Act shall not
25 disseminate the criminal history information.

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

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

30 (f) Criminal justice agencies, its employees, and officials shall be
31 immune from civil liability, except in instances of gross negligence or
32 intentional malice, for dissemination of criminal history information under
33 this act.

34
35 SECTION 7. Administration.

36 (a)(1) Release of criminal history information under this act shall

1 only be made by the Identification Bureau of the Department of the Arkansas
2 State Police and the Arkansas Crime Information Center as authorized by law.

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

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

11
12 SECTION 8. Access.

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

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

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20 SECTION 9. Right of review and challenge.

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

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

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

29 (2) The local law enforcement agency must send the fingerprint
30 card and information directly to the Arkansas State Police Identification
31 Bureau.

32 (3) The law enforcement agency shall verify that the
33 identification of the person and the fingerprint card information are
34 correct.

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

1 (c)(1) A person, after positive identification verification, may
2 review his or her requestor information maintained through the Department of
3 Arkansas State Police or its designee.

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

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6 SECTION 10. Fees.

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

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

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

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

19 (C) The Department of Arkansas State Police may utilize
20 these funds for the operation, expansion, and integration of the Automated
21 Fingerprint Identification System, which includes components and software to
22 support a total integrated solution associated with the Automated Fingerprint
23 Identification System.

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

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29 SECTION 11. Penalty

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

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

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

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

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

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

/s/ Mahony