

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/4/05 H3/10/05 H3/29/05

A Bill

HOUSE BILL 1466

5 By: Representative Verkamp
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT CERTAIN EXPUNGED OFFENSES
10 DO NOT CAUSE DISQUALIFICATION FROM EMPLOYMENT,
11 LICENSURE, CERTIFICATION, OR OTHER ACTIVITIES FOR
12 PERSONS SUBJECT TO CRIMINAL BACKGROUND CHECKS
13 UNDER ARKANSAS CODE §§ 9-28-409, 17-27-313, 17-
14 87-312, 17-97-312, 17-103-307, 20-13-1106, 20-33-
15 205, 20-48-804, AND 21-15-103; AND FOR OTHER
16 PURPOSES.

Subtitle

17
18 AN ACT TO PROVIDE THAT EXPUNGED RECORDS
19 OF CERTAIN CRIMINAL OFFENSES DO NOT
20 CAUSE DISQUALIFICATION FROM EMPLOYMENT,
21 LICENSURE, CERTIFICATION, OR OTHER
22 ACTIVITIES.
23
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 9-28-409 is amended to read as follows:
29 9-28-409. Criminal record and child maltreatment checks.

30 (a)(1) Each of the following persons in a child welfare agency shall
31 be checked with the child maltreatment central registry in his or her state
32 of residence and any state of residence in which the person has lived for the
33 past six (6) years and in the person's state of employment, if different, for
34 reports of child maltreatment in compliance with policy and procedures
35 promulgated by the Child Welfare Agency Review Board:

36 (A) An employee having direct and unsupervised contact



1 with children;

2 (B) A volunteer having direct and unsupervised contact
3 with children;

4 (C) A foster parent and all household members age ten (10)
5 years and older;

6 (D) An adoptive parent and all household members age ten
7 (10) years and older;

8 (E) An owner having direct and unsupervised contact with
9 children; and

10 (F) A member of the agency's board of directors having
11 direct and unsupervised contact with children.

12 (2) The board shall have the authority to deny a license or
13 church-operated exemption to any applicant found to have any record of
14 founded child maltreatment in the official record of the registry.

15 (3)(A) Any person required to be checked under this section who
16 is found to have any record of child maltreatment in the official record of
17 the registry shall be reviewed by the owner or operator of the facility in
18 consultation with the board to determine appropriate corrective action
19 measures which would indicate, but are not limited to, training, probationary
20 employment, or nonselection for employment.

21 (B) The board shall also have the authority to deny a
22 license or church-operated exemption to an applicant who continues to employ
23 a person with any record of founded child maltreatment.

24 (4) All persons required to be checked with the registry under
25 this subsection shall repeat the check every two (2) years, except that
26 adoptive parents who reside in Arkansas shall repeat the check every year
27 pending court issuance of a final decree of adoption, at which point repeat
28 checks shall no longer be required.

29 (b)(1) Each of the following persons in a child welfare agency who has
30 lived in Arkansas continuously for six (6) years or more shall be checked
31 with the Identification Bureau of the Department of Arkansas State Police for
32 convictions of the offenses listed in this subchapter in compliance with
33 policy and procedures promulgated by the board:

34 (A) An employee having direct and unsupervised contact
35 with children;

36 (B) A volunteer having direct and unsupervised contact

1 with children;

2 (C) A foster parent and all household members age sixteen
3 (16) years and older;

4 (D) An owner having direct and unsupervised contact with
5 children; and

6 (E) A member of the agency's board of directors having
7 direct and unsupervised contact with children.

8 (2)(A) The owner or operator of a child welfare agency shall
9 maintain on file, subject to inspection by the board, evidence that
10 Department of Arkansas State Police criminal records checks have been
11 initiated on all persons required to be checked and the results of the
12 checks.

13 (B) Failure to maintain that evidence on file will be
14 prima facie grounds to revoke the license or church-operated exemption of the
15 owner or operator of the child welfare agency.

16 (3) All persons required to be checked with the Department of
17 Arkansas State Police under this subsection shall repeat the check every five
18 (5) years, except that adoptive parents shall not repeat the check after
19 court issuance of a final decree of adoption in the adoption case for which
20 the check was obtained.

21 (4) Adoptive parents shall complete background checks as
22 required by law.

23 (c)(1) Each of the following persons in a child welfare agency who has
24 not lived in Arkansas continuously for the past six (6) years shall be
25 checked with the Federal Bureau of Investigation for convictions of the
26 offenses listed in this subchapter, in compliance with federal law and
27 regulations and with policy and procedures promulgated by the board:

28 (A) An employee having direct and unsupervised contact
29 with children;

30 (B) A volunteer having direct and unsupervised contact
31 with children;

32 (C) A foster parent and all family members age sixteen
33 (16) years and older;

34 (D) An owner having direct and unsupervised contact with
35 children; and

36 (E) A member of the agency's board of directors having

1 *direct and unsupervised contact with children.*

2 *(2)(A) The owner or operator of a child welfare agency shall*
3 *maintain on file, subject to inspection by the board, evidence that the*
4 *Federal Bureau of Investigation's criminal records checks have been initiated*
5 *on all persons required to be checked and the results of the checks.*

6 *(B) Failure to maintain that evidence on file will be*
7 *prima facie grounds to revoke the license or church-operated exemption of the*
8 *owner or operator of the child welfare agency.*

9 *(d)(1) Each person required to have a criminal records check under*
10 *this subchapter shall complete a criminal records check form developed by the*
11 *Department of Human Services and shall sign the form which contains the*
12 *following under oath before a notary public:*

13 *(A) Certification that the subject of the check consents*
14 *to the completion of the check;*

15 *(B) Certification that the subject of the check has not*
16 *been convicted of a crime and, if the subject of the check has been convicted*
17 *of a crime, contains a description of the crime and the particulars of the*
18 *conviction;*

19 *(C) Notification that the subject of the check may*
20 *challenge the accuracy and completeness of any information in any report and*
21 *obtain a prompt determination as to the validity of the challenge before a*
22 *final determination is made by the board with respect to his or her*
23 *employment status or licensing status;*

24 *(D) Notification that the subject of the check may be*
25 *denied a license or exemption to operate a child welfare agency or may be*
26 *denied unsupervised access to children in the care of a child welfare agency*
27 *due to information obtained by the check which indicates that the subject of*
28 *the check has been convicted of, or is under pending indictment for, a crime*
29 *listed in this subchapter; and*

30 *(E) Notification that any background check and the results*
31 *thereof shall be handled in accordance with the requirements of Pub. L. 92-*
32 *544.*

33 *(2) The owner or operator of the child welfare agency shall*
34 *submit the criminal records check form to the Identification Bureau of the*
35 *Department of Arkansas State Police for processing within ten (10) days of*
36 *hiring the employee, who shall remain under conditional employment until the*

1 registry check and criminal records checks required under this subchapter are
2 completed.

3 (3) Nothing in this section shall be construed to prevent the
4 board from denying a license or exemption to an owner or preventing an
5 operator or employee in a child welfare agency from having unsupervised
6 access to children by reason of the pending appeal of a criminal conviction
7 or child maltreatment determination.

8 (4) In the event a legible set of fingerprints as determined by
9 the Department of Arkansas State Police and the Federal Bureau of
10 Investigation cannot be obtained after a minimum of three (3) attempts by
11 qualified law enforcement personnel, the board shall determine eligibility
12 based upon a name check by the Department of Arkansas State Police and the
13 Federal Bureau of Investigation.

14 (5)(A) An owner or operator of a child welfare agency shall not
15 be liable during a conditional period of service for hiring any person
16 required to have a background check pursuant to this subchapter who may be
17 subject to a charge of false swearing upon completion of central registry and
18 criminal records check.

19 (B)(i) Pursuant to this subchapter, false swearing shall
20 occur when a person while under oath provides false information or omits
21 information that the person knew or reasonably should have known was
22 material.

23 (ii) Lack of knowledge that information is material
24 is not a defense to a charge of false swearing.

25 (C) For purposes of this subchapter, false swearing is a
26 Class A misdemeanor.

27 (e)(1) Except as provided in ~~subdivision (d)(2)~~ subdivisions (d)(2) or
28 (h)(1) of this section, no person who is required to have a criminal check
29 under subdivision (b)(1) or (c)(1) of this section shall be eligible to have
30 direct and unsupervised contact with a child in the care of a child welfare
31 agency if that person has pleaded guilty or nolo contendere to or has been
32 found guilty of any of the following offenses by any court in the State of
33 Arkansas or of any similar offense by a court in another state or of any
34 similar offense by a federal court:

35 (A) Capital murder as prohibited in § 5-10-101;

36 (B) Murder in the first degree and murder in the second

- 1 degree as prohibited in §§ 5-10-102 and 5-10-103;
- 2 (C) Manslaughter as prohibited in § 5-10-104;
- 3 (D) Negligent homicide as prohibited in § 5-10-105;
- 4 (E) Kidnapping as prohibited in § 5-11-102;
- 5 (F) False imprisonment in the first degree and false
6 imprisonment in the second degrees as prohibited in §§ 5-11-103 and 5-11-104;
- 7 (G) Permanent detention or restraint as prohibited in § 5-
8 11-106;
- 9 (H) Battery in the first degree, battery in the second
10 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-
11 202 and 5-13-203;
- 12 (I) Aggravated assault as prohibited in § 5-13-204;
- 13 (J) Assault in the first degree and assault in the second
14 degree as prohibited in §§ 5-13-205 and 5-13-206;
- 15 (K) Terroristic threatening in the first degree and
16 terroristic threatening in the second degree as prohibited in § 5-13-301(a)
17 and (b);
- 18 (L) Any sexual offense as prohibited in § 5-14-101 et
19 seq.;
- 20 (M) Permitting abuse of a child as prohibited in § 5-27-
21 221;
- 22 (N) Endangering the welfare of a minor in the first degree
23 and endangering the welfare of a minor in the second degree as prohibited in
24 §§ 5-27-203 and 5-27-204;
- 25 (O) Contributing to the delinquency of a minor as
26 prohibited in § 5-27-205;
- 27 (P) Engaging children in sexually explicit conduct for use
28 in visual or print medium, transportation of minors for prohibited sexual
29 conduct, use of a child or consent to use of a child in sexual performance,
30 and producing, directing, or promoting sexual performance by a child, as
31 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 32 (Q) Incest, as prohibited in § 5-26-202;
- 33 (R) Interference with visitation as prohibited in § 5-26-
34 501;
- 35 (S) Interference with custody as prohibited in § 5-26-502;
- 36 (T) Engaging in conduct with respect to controlled

1 substances as prohibited in § 5-64-401;

2 (U) Distribution to minors as prohibited in § 5-64-406;

3 (V) Public display of obscenity as prohibited in § 5-68-
4 205;

5 (W) Prostitution as prohibited in § 5-70-102;

6 (X) Promoting prostitution in the first degree, promoting
7 prostitution in the second degree, and promoting prostitution in the third
8 degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

9 (Y) Computer child pornography as prohibited in § 5-27-
10 603;

11 (Z) Computer exploitation of a child in the first degree
12 as prohibited in § 5-27-605(a);

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

16 (BB) Any felony or any misdemeanor involving violence,
17 threatened violence, or moral turpitude; and

18 (CC) Any former or future law of this or any other state
19 or of the federal government which is substantially equivalent to one of the
20 aforementioned offenses.

21 (2)(A) Any person who is required to have a criminal check under
22 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
23 contendere to, or is found guilty of, any of the offenses listed in
24 subdivision (e)(1) of this section shall be absolutely disqualified to be an
25 owner, operator, volunteer, foster parent, adoptive parent, member of an
26 agency's board of directors, or employee in a child welfare agency during the
27 period of his or her confinement, probation, or parole supervision.

28 (B) ~~Any~~ Except as provided in subdivision (h)(1) of this
29 section, any person who is required to have a criminal check under
30 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
31 contendere to, or is found guilty of, any of the offenses listed in
32 subdivision (e)(1) of this section shall be presumed to be disqualified to be
33 an owner, operator, volunteer, foster parent, adoptive parent, member of an
34 agency's board of directors, or employee in a child welfare agency after the
35 completion of his or her term of confinement, probation, or parole
36 supervision. This presumption can be rebutted in the following manner:

1 (i) The applicant must petition the board to make a
2 determination that the applicant does not pose a risk of harm to any person
3 served by the facility and is therefore qualified to serve in a child welfare
4 agency. The applicant shall bear the burden of making such a showing; and

5 (ii) The board in its discretion may permit an
6 applicant to serve in a child welfare agency notwithstanding having been
7 convicted of an offense listed in this section upon making a determination
8 that the applicant does not pose a risk of harm to any person served by the
9 facility. In making this determination, the board shall consider the
10 following factors:

11 (a) The nature and severity of the crime;
12 (b) The consequences of the crime;
13 (c) The number and frequency of crimes;
14 (d) The relation between the crime and the
15 health, safety, and welfare of persons served by a child welfare agency, such
16 as:

17 (1) The age and vulnerability of victims
18 of the crime;

19 (2) The harm suffered by the victim; and

20 (3) The similarity between the victim
21 and persons served by a child welfare agency;

22 (e) The time elapsed without a repeat of the
23 same or similar event;

24 (f) Documentation of successful completion of
25 training or rehabilitation pertinent to the incident; and

26 (g) Any other information that bears on the
27 applicant's ability to care for children or any other relevant information.

28 (C) The board's decision to disqualify a person serving in
29 a child welfare agency pursuant to this section shall constitute the final
30 administrative agency action and shall not be subject to review.

31 (f)(1) No foster child in the custody of the Department of Human
32 Services shall be placed in the home of any foster or adoptive parent if the
33 criminal records check reveals a felony conviction for:

34 (A) Child abuse or neglect;

35 (B) Spousal abuse;

36 (C) A crime against children, including child pornography;

1 or

2 (D) A crime involving violence, including rape, sexual
3 assault, or homicide, but not including other physical assault or battery.

4 (2) No foster child in the custody of another state agency who
5 is placed in Arkansas shall be placed in any home if the criminal records
6 check reveals a felony conviction of an adult in the home for:

7 (A) Child abuse or neglect;

8 (B) Spousal abuse;

9 (C) A crime against children, including child pornography;

10 or

11 (D) A crime involving violence, including rape, sexual
12 assault, or homicide, but not including other physical assault or battery.

13 (g)(1) No foster child in the custody of the Department of Human
14 Services shall be placed in the home of any foster or adoptive parent if the
15 criminal record check reveals a felony conviction for physical assault,
16 battery, or a drug-related offense if the offense was committed within the
17 past five (5) years.

18 (2) No foster child in the custody of another state agency who
19 is placed in Arkansas shall be placed in any home if the criminal record
20 check reveals a felony conviction of any adult in the home for physical
21 assault, battery, or a drug-related offense if the offense was committed
22 within the past five (5) years.

23 (h)(1) For purposes of this section, an expunged record of a
24 conviction or plea of guilty or nolo contendere to an offense listed in
25 subdivision (e)(1) of this section shall not be considered a conviction,
26 guilty plea, or nolo contendere plea to the offense unless the offense is
27 also listed in subdivision (h)(2) of this section.

28 (2) Because of the serious nature of the offenses and the close
29 relationship to the type of work that is to be performed, the following shall
30 result in permanent disqualification:

31 (A) Capital murder, as prohibited in § 5-10-101;

32 (B) Murder in the first degree and murder in the second
33 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

35 (D) Rape, as prohibited in § 5-14-103;

36 (E) Sexual assault in the first degree and second degree,

1 as prohibited in §§ 5-14-124 and 5-14-125;

2 (F) Endangering the welfare of a minor in the first degree
 3 and endangering the welfare of a minor in the second degree, as prohibited in
 4 §§ 5-27-203 and 5-27-204;

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

6 (H) Arson, as prohibited in § 5-38-301;

7 (I) Endangering the welfare of incompetent person in the
 8 first degree, as prohibited in § 5-27-201; and

9 (J) Adult abuse that constitutes a felony, as prohibited
 10 in § 5-28-103.

11
 12 SECTION 2. Arkansas Code § 17-87-312 is amended to read as follows:
 13 17-87-312. Criminal background checks.

14 (a) Each first-time applicant for a license issued by the Arkansas
 15 State Board of Nursing shall apply to the Identification Bureau of the
 16 Department of Arkansas State Police for a state and national criminal
 17 background check, to be conducted by the Federal Bureau of Investigation.

18 (b) The check shall conform to the applicable federal standards and
 19 shall include the taking of fingerprints.

20 (c) The applicant shall sign a release of information to the board and
 21 shall be responsible to the Department of Arkansas State Police for the
 22 payment of any fee associated with the criminal background check.

23 (d) Upon completion of the criminal background check, the
 24 Identification Bureau of the Department of Arkansas State Police shall
 25 forward all information obtained concerning the applicant in the commission
 26 of any offense listed in subsection (f) of this section to the board.

27 (e) [Repealed].

28 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
 29 person shall be eligible to receive or hold a license issued by the board if
 30 that person has pleaded guilty or nolo contendere to, or has been found
 31 guilty of, any of the following offenses by any court in the State of
 32 Arkansas or of any similar offense by a court in another state or of any
 33 similar offense by a federal court:

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

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

- 1 (3) *Manslaughter, as prohibited in § 5-10-104;*
- 2 (4) *Negligent homicide, as prohibited in § 5-10-105;*
- 3 (5) *Kidnapping, as prohibited in § 5-11-102;*
- 4 (6) *False imprisonment in the first degree, as prohibited in §*
5 *5-11-103;*
- 6 (7) *Permanent detention or restraint, as prohibited in § 5-11-*
7 *106;*
- 8 (8) *Robbery, as prohibited in § 5-12-102;*
- 9 (9) *Aggravated robbery, as prohibited in § 5-12-103;*
- 10 (10) *Battery in the first degree, as prohibited in § 5-13-201;*
- 11 (11) *Aggravated assault, as prohibited in § 5-13-204;*
- 12 (12) *Introduction of a controlled substance into the body of*
13 *another person, as prohibited in § 5-13-210;*
- 14 (13) *Terroristic threatening in the first degree, as prohibited*
15 *in § 5-13-301;*
- 16 (14) *Rape, as prohibited in § 5-14-103;*
- 17 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
- 18 (16) *Sexual assault in the first degree, second degree, third*
19 *degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;*
- 20 (17) *Incest, as prohibited in § 5-26-202;*
- 21 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
22 *5-26-306;*
- 23 (19) *Endangering the welfare of an incompetent person in the*
24 *first degree, as prohibited in § 5-27-201;*
- 25 (20) *Endangering the welfare of a minor in the first degree, as*
26 *prohibited in § 5-27-203;*
- 27 (21) *Permitting abuse of a child, as prohibited in § 5-27-*
28 *221(a)(1) and (3);*
- 29 (22) *Engaging children in sexually explicit conduct for use in*
30 *visual or print media, transportation of minors for prohibited sexual*
31 *conduct, pandering or possessing visual or print medium depicting sexually*
32 *explicit conduct involving a child, or use of a child or consent to use of a*
33 *child in a sexual performance by producing, directing, or promoting a sexual*
34 *performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,*
35 *and 5-27-403;*
- 36 (23) *Felony adult abuse, as prohibited in § 5-28-103;*

- 1 (24) Theft of property, as prohibited in § 5-36-103;
2 (25) Theft by receiving, as prohibited in § 5-36-106;
3 (26) Arson, as prohibited in § 5-38-301;
4 (27) Burglary, as prohibited in § 5-39-201;
5 (28) Felony violation of the Uniform Controlled Substances Act,
6 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
7 (29) Promotion of prostitution in the first degree, as
8 prohibited in § 5-70-104;
9 (30) Stalking, as prohibited in § 5-71-229;
10 (31) Criminal attempt, criminal complicity, criminal
11 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
12 5-3-301, and 5-3-401, to commit any of the offenses listed in this
13 subsection;
14 (32) Computer child pornography, as prohibited in § 5-27-603;
15 and
16 (33) Computer exploitation of a child in the first degree, as
17 prohibited in § 5-27-605.

18 (g)(1) The board may issue a nonrenewable temporary permit for
19 licensure to a first-time applicant pending the results of the criminal
20 background check. The permit shall be valid for no more than six (6) months.

21 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
22 section, upon receipt of information from the Identification Bureau of the
23 Department of Arkansas State Police that the person holding the letter of
24 provisional licensure has pleaded guilty or nolo contendere to, or has been
25 found guilty of, any offense listed in subsection (f) of this section, the
26 board shall immediately revoke the provisional license.

27 (h)(1) The provisions of subsection (f) and subdivision (g)(2) of this
28 section may be waived by the board upon the request of:

- 29 (A) An affected applicant for licensure; or
30 (B) The person holding a license subject to revocation.

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

- 33 (A) The age at which the crime was committed;
34 (B) The circumstances surrounding the crime;
35 (C) The length of time since the crime;
36 (D) Subsequent work history;

1 (E) Employment references;

2 (F) Character references; and

3 (G) Other evidence demonstrating that the applicant does
4 not pose a threat to the health or safety of the public.

5 (i)(1) Any information received by the board from the Identification
6 Bureau of the Department of Arkansas State Police pursuant to this section
7 shall not be available for examination except by:

8 (A) The affected applicant for licensure or his or her
9 authorized representative; or

10 (B) The person whose license is subject to revocation or
11 his or her authorized representative.

12 (2) No record, file, or document shall be removed from the
13 custody of the Department of Arkansas State Police.

14 (j) Any information made available to the affected applicant for
15 licensure or the person whose license is subject to revocation shall be
16 information pertaining to that person only.

17 (k) Rights of privilege and confidentiality established in this
18 section shall not extend to any document created for purposes other than this
19 background check.

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

22 (m)(1) For purposes of this section, an expunged record of a
23 conviction or plea of guilty or nolo contendere to an offense listed in
24 subsection (f) of this section shall not be considered a conviction, guilty
25 plea, or nolo contendere plea to the offense unless the offense is also
26 listed in subdivision (m)(2) of this section.

27 (2) Because of the serious nature of the offenses and the close
28 relationship to the type of work that is to be performed, the following shall
29 result in permanent disqualification:

30 (A) Capital murder, as prohibited in § 5-10-101;

31 (B) Murder in the first degree and murder in the second
32 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

34 (D) Rape, as prohibited in § 5-14-103;

35 (E) Sexual assault in the first degree and second degree,
36 as prohibited in §§ 5-14-124 and 5-14-125;

1 (F) Endangering the welfare of a minor in the first degree
 2 and endangering the welfare of a minor in the second degree, as prohibited in
 3 §§ 5-27-203 and 5-27-204;

4 (G) Incest, as prohibited in § 5-26-202;

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

6 (I) Endangering the welfare of incompetent person in the
 7 first degree, as prohibited in § 5-27-201; and

8 (J) Adult abuse that constitutes a felony, as prohibited
 9 in § 5-28-103.

10
 11 SECTION 3. Arkansas Code § 17-97-312 is amended to read as follows:
 12 17-97-312. Criminal background checks.

13 (a) Each first-time applicant for a license issued by the Arkansas
 14 Psychology Board shall be required to apply to the Identification Bureau of
 15 the Department of Arkansas State Police for a state and national criminal
 16 background check to be conducted by the Federal Bureau of Investigation.

17 (b) The check shall conform to the applicable federal standards and
 18 shall include the taking of fingerprints.

19 (c) The applicant shall sign a release of information to the board and
 20 shall be responsible to the Department of Arkansas State Police for the
 21 payment of any fee associated with the criminal background check.

22 (d) Upon completion of the criminal background check, the
 23 Identification Bureau of the Department of Arkansas State Police shall
 24 forward to the board all information obtained concerning the applicant in the
 25 commission of any offense listed in subsection (f) of this section.

26 (e) At the conclusion of any background check required by this
 27 section, the Identification Bureau of the Department of Arkansas State Police
 28 shall promptly destroy the fingerprint card of the applicant.

29 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
 30 person shall be eligible to receive or hold a license issued by the board if
 31 that person has pleaded guilty or nolo contendere to, or been found guilty
 32 of, any of the following offenses by any court in the State of Arkansas or of
 33 any similar offense by a court in another state or of any similar offense by
 34 a federal court:

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

36 (2) Murder in the first degree and second degree, as prohibited

- 1 in §§ 5-10-102 and 5-10-103;
- 2 (3) Manslaughter, as prohibited in § 5-10-104;
- 3 (4) Negligent homicide, as prohibited in § 5-10-105;
- 4 (5) Kidnapping, as prohibited in § 5-11-102;
- 5 (6) False imprisonment in the first degree, as prohibited in §
- 6 5-11-103;
- 7 (7) Permanent detention or restraint, as prohibited in § 5-11-
- 8 106;
- 9 (8) Robbery, as prohibited in § 5-12-102;
- 10 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 11 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 12 (11) Aggravated assault, as prohibited in § 5-13-204;
- 13 (12) Introduction of controlled substance into body of another
- 14 person, as prohibited in § 5-13-210;
- 15 (13) Terroristic threatening in the first degree, as prohibited
- 16 in § 5-13-301;
- 17 (14) Rape, as prohibited in § 5-14-103;
- 18 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 19 (16) Sexual assault in the first degree, second degree, third
- 20 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 21 (17) Incest, as prohibited in § 5-26-202;
- 22 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
- 23 5-26-306;
- 24 (19) Endangering the welfare of an incompetent person in the
- 25 first degree, as prohibited in § 5-27-201;
- 26 (20) Endangering the welfare of a minor in the first degree, as
- 27 prohibited in § 5-27-203;
- 28 (21) Permitting abuse of a child, as prohibited in § 5-27-
- 29 221(a)(1) and (3);
- 30 (22) Engaging children in sexually explicit conduct for use in
- 31 visual or print media, transportation of minors for prohibited sexual
- 32 conduct, pandering or possessing visual or print medium depicting sexually
- 33 explicit conduct involving a child, or use of a child or consent to use of a
- 34 child in a sexual performance by producing, directing, or promoting a sexual
- 35 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,
- 36 and 5-27-403;

- 1 (23) *Felony adult abuse, as prohibited in § 5-28-103;*
2 (24) *Theft of property, as prohibited in § 5-36-103;*
3 (25) *Theft by receiving, as prohibited in § 5-36-106;*
4 (26) *Arson, as prohibited in § 5-38-301;*
5 (27) *Burglary, as prohibited in § 5-39-201;*
6 (28) *Felony violation of the Uniform Controlled Substances Act,*
7 *§§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;*
8 (29) *Promotion of prostitution in the first degree, as*
9 *prohibited in § 5-70-104;*
10 (30) *Stalking, as prohibited in § 5-71-229;*
11 (31) *Criminal attempt, criminal complicity, criminal*
12 *solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,*
13 *5-3-301, and 5-3-401, to commit any of the offenses listed in this*
14 *subsection;*
15 (32) *Computer child pornography, as prohibited in § 5-27-603;*
16 *and*
17 (33) *Computer exploitation of a child in the first degree, as*
18 *prohibited in § 5-27-605.*
19 (g)(1) *The board may issue a six-month nonrenewable letter of*
20 *provisional eligibility for licensure to a first-time applicant pending the*
21 *results of the criminal background check.*
22 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
23 section, upon receipt of information from the Identification Bureau of the
24 Department of Arkansas State Police that the person holding a letter of
25 provisional licensure has pleaded guilty or nolo contendere to, or been found
26 guilty of, any offense listed in subsection (f) of this section, the board
27 shall immediately revoke the provisional license.
28 (h)(1) *The provisions of subsection (f) and subdivision (g)(2) of this*
29 *section may be waived by the board upon the request of:*
30 (A) *An affected applicant for licensure; or*
31 (B) *The person holding a license subject to revocation.*
32 (2) *Circumstances for which a waiver may be granted shall*
33 *include, but not be limited to, the following:*
34 (A) *The age at which the crime was committed;*
35 (B) *The circumstances surrounding the crime;*
36 (C) *The length of time since the crime;*

1 (D) Subsequent work history;
2 (E) Employment references;
3 (F) Character references; and
4 (G) Other evidence demonstrating that the applicant does
5 not pose a threat to the health or safety of children.

6 (i)(1) Any information received by the board from the Identification
7 Bureau of the Department of Arkansas State Police pursuant to this section
8 shall not be available for examination except by the affected applicant for
9 licensure or his or her authorized representative or the person whose license
10 is subject to revocation, or his or her authorized representative.

11 (2) No record, file, or document shall be removed from the
12 custody of the department.

13 (j) Any information made available to the affected applicant for
14 licensure or the person whose license is subject to revocation shall be
15 information pertaining to that person only.

16 (k) Rights of privilege and confidentiality established herein shall
17 not extend to any document created for purposes other than this background
18 check.

19 (l) The board shall adopt the necessary rules and regulations to fully
20 implement the provisions of this section.

21 (m)(1) For purposes of this section, an expunged record of a
22 conviction or plea of guilty or nolo contendere to an offense listed in
23 subsection (f) of this section shall not be considered a conviction, guilty
24 plea, or nolo contendere plea to the offense unless the offense is also
25 listed in subdivision (m)(2) of this section.

26 (2) Because of the serious nature of the offenses and the close
27 relationship to the type of work that is to be performed, the following shall
28 result in permanent disqualification:

29 (A) Capital murder, as prohibited in § 5-10-101;

30 (B) Murder in the first degree and murder in the second
31 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

33 (D) Rape, as prohibited in § 5-14-103;

34 (E) Sexual assault in the first degree and second degree,
35 as prohibited in §§ 5-14-124 and 5-14-125;

36 (F) Endangering the welfare of a minor in the first degree

1 and endangering the welfare of a minor in the second degree, as prohibited in
 2 §§ 5-27-203 and 5-27-204;

3 (G) Incest, as prohibited in § 5-26-202;

4 (H) Arson, as prohibited in § 5-38-301;

5 (I) Endangering the welfare of incompetent person in the
 6 first degree, as prohibited in § 5-27-201; and

7 (J) Adult abuse that constitutes a felony, as prohibited
 8 in § 5-28-103.

9
 10 SECTION 4. Arkansas Code § 17-103-307 is amended to read as follows:
 11 17-103-307. Criminal background checks.

12 (a) Each first-time applicant for a license issued by the Arkansas
 13 Social Work Licensing Board shall be required to apply to the Identification
 14 Bureau of the Department of Arkansas State Police for a state and national
 15 criminal background check, to be conducted by the Federal Bureau of
 16 Investigation.

17 (b) The check shall conform to the applicable federal standards and
 18 shall include the taking of fingerprints.

19 (c) The applicant shall sign a release of information to the board and
 20 shall be responsible to the Department of Arkansas State Police for the
 21 payment of any fee associated with the criminal background check.

22 (d) Upon completion of the criminal background check, the
 23 Identification Bureau of the Department of Arkansas State Police shall
 24 forward all information obtained concerning the applicant in the commission
 25 of any offense listed in subsection (f) of this section to the board.

26 (e) At the conclusion of any background check required by this
 27 section, the Identification Bureau of the Department of Arkansas State Police
 28 shall promptly destroy the fingerprint card of the applicant.

29 (f) ~~No~~ Except as provided in subdivision (m)(1) of this section, no
 30 person shall be eligible to receive or hold a license issued by the board if
 31 that person has pleaded guilty or nolo contendere to, or been found guilty
 32 of, any of the following offenses by any court in the State of Arkansas or of
 33 any similar offense by a court in another state or of any similar offense by
 34 a federal court:

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

36 (2) Murder in the first degree and second degree, as prohibited

- 1 in §§ 5-10-102 and 5-10-103;
- 2 (3) Manslaughter, as prohibited in § 5-10-104;
- 3 (4) Negligent homicide, as prohibited in § 5-10-105;
- 4 (5) Kidnapping, as prohibited in § 5-11-102;
- 5 (6) False imprisonment in the first degree, as prohibited in §
- 6 5-11-103;
- 7 (7) Permanent detention or restraint, as prohibited in § 5-11-
- 8 106;
- 9 (8) Robbery, as prohibited in § 5-12-102;
- 10 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 11 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 12 (11) Aggravated assault, as prohibited in § 5-13-204;
- 13 (12) Introduction of controlled substance into body of another
- 14 person, as prohibited in § 5-13-210;
- 15 (13) Terroristic threatening in the first degree, as prohibited
- 16 in § 5-13-301;
- 17 (14) Rape, as prohibited in § 5-14-103;
- 18 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 19 (16) Sexual assault in the first degree, second degree, third
- 20 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 21 (17) Incest, as prohibited in § 5-26-202;
- 22 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
- 23 5-26-306;
- 24 (19) Endangering the welfare of an incompetent person in the
- 25 first degree, as prohibited in § 5-27-201;
- 26 (20) Endangering the welfare of a minor in the first degree, as
- 27 prohibited in § 5-27-203;
- 28 (21) Permitting abuse of a child, as prohibited in § 5-27-
- 29 221(a)(1) and (3);
- 30 (22) Engaging children in sexually explicit conduct for use in
- 31 visual or print media, transportation of minors for prohibited sexual
- 32 conduct, pandering or possessing visual or print medium depicting sexually
- 33 explicit conduct involving a child, or use of a child or consent to use of a
- 34 child in a sexual performance by producing, directing, or promoting a sexual
- 35 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,
- 36 and 5-27-403;

1 (23) Felony adult abuse, as prohibited in § 5-28-103;
2 (24) Theft of property, as prohibited in § 5-36-103;
3 (25) Theft by receiving, as prohibited in § 5-36-106;
4 (26) Arson, as prohibited in § 5-38-301;
5 (27) Burglary, as prohibited in § 5-39-201;
6 (28) Felony violation of the Uniform Controlled Substances Act,
7 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

8 (29) Promotion of prostitution in the first degree, as
9 prohibited in § 5-70-104;

10 (30) Stalking, as prohibited in § 5-71-229;

11 (31) Criminal attempt, criminal complicity, criminal
12 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
13 5-3-301, and 5-3-401, to commit any of the offenses listed in this
14 subsection;

15 (32) Computer child pornography, as prohibited in § 5-27-603;
16 and

17 (33) Computer exploitation of a child in the first degree, as
18 prohibited in § 5-27-605.

19 (g)(1) The board may issue a six-month nonrenewable letter of
20 provisional eligibility for licensure to a first-time applicant pending the
21 results of the criminal background check.

22 (2) ~~Upon~~ Except as provided in subdivision (m)(1) of this
23 section, upon receipt of information from the Identification Bureau of the
24 Department of Arkansas State Police that the person holding such a letter of
25 provisional licensure has pleaded guilty or nolo contendere to, or been found
26 guilty of, any offense listed in subsection (f) of this section, the board
27 shall immediately revoke the provisional license.

28 (h)(1) The provisions of subsection (f) and subdivision (g)(2) of this
29 section may be waived by the board upon the request of:

30 (A) An affected applicant for licensure; or

31 (B) The person holding a license subject to revocation.

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

34 (A) The age at which the crime was committed;

35 (B) The circumstances surrounding the crime;

36 (C) The length of time since the crime;

1 (D) Subsequent work history;

2 (E) Employment references;

3 (F) Character references; and

4 (G) Other evidence demonstrating that the applicant does
5 not pose a threat to the health or safety of children.

6 (i) Any information received by the board from the Identification
7 Bureau of the Department of Arkansas State Police pursuant to this section
8 shall not be available for examination except by the affected applicant for
9 licensure, his or her authorized representative, or the person whose license
10 is subject to revocation or his or her authorized representative. No record,
11 file, or document shall be removed from the custody of the Department of
12 Arkansas State Police.

13 (j) Any information made available to the affected applicant for
14 licensure or the person whose license is subject to revocation shall be
15 information pertaining to that person only.

16 (k) Rights of privilege and confidentiality established in this
17 section shall not extend to any document created for purposes other than this
18 background check.

19 (l) The board shall adopt the necessary rules and regulations to fully
20 implement the provisions of this section.

21 (m)(1) For purposes of this section, an expunged record of a
22 conviction or plea of guilty or nolo contendere to an offense listed in
23 subsection (f) of this section shall not be considered a conviction, guilty
24 plea, or nolo contendere plea to the offense unless the offense is also
25 listed in subdivision (m)(2) of this section.

26 (2) Because of the serious nature of the offenses and the close
27 relationship to the type of work that is to be performed, the following shall
28 result in permanent disqualification:

29 (A) Capital murder, as prohibited in § 5-10-101;

30 (B) Murder in the first degree and murder in the second
31 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

33 (D) Rape, as prohibited in § 5-14-103;

34 (E) Sexual assault in the first degree and second degree,
35 as prohibited in §§ 5-14-124 and 5-14-125;

36 (F) Endangering the welfare of a minor in the first degree

1 and endangering the welfare of a minor in the second degree, as prohibited in
 2 §§ 5-27-203 and 5-27-204;

3 (G) Incest, as prohibited in § 5-26-202;

4 (H) Arson, as prohibited in § 5-38-301;

5 (I) Endangering the welfare of incompetent person in the
 6 first degree, as prohibited in § 5-27-201; and

7 (J) Adult abuse that constitutes a felony, as prohibited
 8 in § 5-28-103.

9
 10 SECTION 5. Arkansas Code § 20-13-1106 is amended to read as follows:
 11 20-13-1106. Disqualifying offenses - Waiver.

12 (a) ~~The~~ Except as provided in subdivision (e)(1) of this section, the
 13 Division of EMS and Trauma Systems shall issue a determination that a person
 14 is disqualified from certification or recertification if the person has been
 15 found guilty of or has pled guilty or nolo contendere to any of the offenses
 16 listed in subsection (b) of this section. However, the division will forward
 17 a request for a waiver to the Director of the Department of Health on all
 18 applicants who have been convicted of the crimes listed in subsection (b) of
 19 this section if five (5) years have passed since the conviction, if five (5)
 20 years have passed since release from custodial confinement, or if the
 21 applicants are currently certified emergency medical technicians, prior to
 22 making the final determination on certification or recertification. These
 23 individuals will not be suspended prior to the director's making the final
 24 determination.

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

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

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

29 (4) Negligent homicide, as prohibited in § 5-10-105;

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

31 (6) False imprisonment in the first degree, as prohibited in §
 32 5-11-103;

33 (7) Permanent detention or restraint, as prohibited in § 5-11-
 34 106;

35 (8) Robbery, as prohibited in § 5-12-102;

36 (9) Aggravated robbery, as prohibited in § 5-12-103;

- 1 (10) *Battery in the first degree, as prohibited in § 5-13-201;*
2 (11) *Aggravated assault, as prohibited in § 5-13-204;*
3 (12) *Introduction of controlled substance into the body of*
4 *another person, as prohibited in § 5-13-210;*
5 (13) *Terroristic threatening in the first degree, as prohibited*
6 *in § 5-13-301;*
7 (14) *Rape, as prohibited in § 5-14-103;*
8 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
9 (16) *Sexual assault in the first degree, second degree, third*
10 *degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;*
11 (17) *Incest, as prohibited in § 5-26-202;*
12 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
13 *5-26-306;*
14 (19) *Endangering the welfare of an incompetent person in the*
15 *first degree, as prohibited in § 5-27-201;*
16 (20) *Endangering the welfare of a minor in the first degree, as*
17 *prohibited in § 5-27-203;*
18 (21) *Permitting child abuse, as prohibited in § 5-27-221(a)(1)*
19 *and (3);*
20 (22) *Engaging children in sexually explicit conduct for use in*
21 *visual or print media, transportation of minors for prohibited sexual*
22 *conduct, pandering or possessing visual or print medium depicting sexually*
23 *explicit conduct involving a child, or use of a child or consent to use of a*
24 *child in a sexual performance by producing, directing, or promoting a sexual*
25 *performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,*
26 *and 5-27-403;*
27 (23) *Felony adult abuse, as prohibited in § 5-28-103;*
28 (24) *Theft of property, as prohibited in § 5-36-103;*
29 (25) *Theft by receiving, as prohibited in § 5-36-106;*
30 (26) *Arson, as prohibited in § 5-38-301;*
31 (27) *Burglary, as prohibited in § 5-39-201;*
32 (28) *Felony violation of the Uniform Controlled Substances Act,*
33 *§ 5-64-101 et seq., as prohibited in § 5-64-401;*
34 (29) *Promotion of prostitution in the first degree, as*
35 *prohibited in § 5-70-104;*
36 (30) *Stalking, as prohibited in § 5-71-229;*

1 (31) Criminal attempt, criminal complicity, criminal
2 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
3 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection
4 (b);

5 (32) Fourth or subsequent driving while intoxicated violations
6 which constitute felony offenses under § 5-65-111(b)(3) and (4);

7 (33) Computer child pornography, as prohibited in § 5-27-603;
8 and

9 (34) Computer exploitation of a child in the first degree, as
10 prohibited in § 5-27-605.

11 (c) An applicant shall not be disqualified from certification or
12 recertification when the applicant has been found guilty of or has pled
13 guilty or nolo contendere to a misdemeanor if the offense did not involve
14 exploitation of an adult, abuse of a person, neglect of a person, or sexual
15 contact.

16 (d)(1) The provisions of this section may be waived by the Department
17 of Health upon written request by the person who is the subject of the
18 criminal history check.

19 (2) The written request for waiver must be mailed to the
20 director within fifteen (15) calendar days after receipt of the determination
21 by the division.

22 (3) Factors to be considered before granting a waiver shall
23 include, but not be limited to:

24 (A) The age at which the crime was committed;

25 (B) The circumstances surrounding the crime;

26 (C) The length of time since the adjudication of guilt;

27 (D) The person's subsequent work history;

28 (E) The person's employment references;

29 (F) The person's character references; and

30 (G) Any other evidence demonstrating that the person does
31 not pose a threat to the health or safety of persons to be cared for.

32 (e)(1) For purposes of this section, an expunged record of a
33 conviction or plea of guilty or nolo contendere to an offense listed in
34 subsection (b) of this section shall not be considered a conviction, guilty
35 plea, or nolo contendere plea to the offense unless the offense is also
36 listed in subdivision (e)(2) of this section.

1 (2) Because of the serious nature of the offenses and the close
2 relationship to the type of work that is to be performed, the following shall
3 result in permanent disqualification:

4 (A) Capital murder, as prohibited in § 5-10-101;

5 (B) Murder in the first degree and murder in the second
6 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

8 (D) Rape, as prohibited in § 5-14-103;

9 (E) Sexual assault in the first degree and second degree,
10 as prohibited in §§ 5-14-124 and 5-14-125;

11 (F) Endangering the welfare of a minor in the first degree
12 and endangering the welfare of a minor in the second degree, as prohibited in
13 §§ 5-27-203 and 5-27-204;

14 (G) Incest, as prohibited in § 5-26-202;

15 (H) Arson, as prohibited in § 5-38-301;

16 (I) Endangering the welfare of incompetent person in the
17 first degree, as prohibited in § 5-27-201; and

18 (J) Adult abuse that constitutes a felony, as prohibited
19 in § 5-28-103.

20
21 SECTION 6. Arkansas Code § 20-33-205 is amended to read as follows:

22 20-33-205. Provisional licenses - Disqualification from employment -
23 Resubmission of applications - Denial or revocation - Penalties.

24 (a) Except as provided in ~~subsection (e)~~ subsections (c), (d), or (f)
25 of this section:

26 (1) A licensing agency shall issue a forty-five-day provisional
27 license to a qualified entity whose operator has been found guilty or has
28 pleaded guilty or nolo contendere to any of the offenses listed in subsection
29 (b) of this section;

30 (2) A licensing agency shall issue a determination that a person
31 is disqualified from employment with a qualified entity if the person has
32 been found guilty or pleaded guilty or nolo contendere to any of the offenses
33 listed in subsection (b) of this section; and

34 (3)(A) A qualified entity shall not knowingly employ a person
35 who has pleaded guilty or nolo contendere to or has been found guilty of any
36 of the offenses listed in subsection (b) of this section by any court in the

1 State of Arkansas or of any similar offense by a court in another state or of
2 any similar offense by a federal court.

3 (B) Except as provided in ~~subsection (e)~~ subsections (c),
4 (d), or (f) of this section:

5 (i) A licensing agency shall issue a forty-five-day
6 provisional license to a qualified entity whose operator has been found
7 guilty of or pleaded guilty or nolo contendere to any of the offenses listed
8 in subsection (b) of this section; and

9 (ii) A licensing agency shall issue a determination
10 that a person is disqualified from employment with a qualified entity if the
11 person has been found guilty of or pleaded guilty or nolo contendere to any
12 of the offenses listed in subsection (b) of this section. A requesting agency
13 shall issue a determination that a person or ElderChoices provider is
14 disqualified from providing care to the elderly or to an individual with a
15 disability, or both, if the person or provider has been found guilty of or
16 pleaded guilty or nolo contendere to any of the offenses listed in subsection
17 (b) of this section.

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

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

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

22 (4) Negligent homicide, as prohibited in § 5-10-105;

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

24 (6) False imprisonment in the first degree, as prohibited in §
25 5-11-103;

26 (7) Permanent detention or restraint, as prohibited in § 5-11-
27 106;

28 (8) Robbery, as prohibited in § 5-12-102;

29 (9) Aggravated robbery, as prohibited in § 5-12-103;

30 (10) Battery, as prohibited in §§ 5-13-201 - 5-13-203;

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

32 (12) Introduction of controlled substance into body of another
33 person, as prohibited in § 5-13-210;

34 (13) Terroristic threatening in the first degree, as prohibited
35 in § 5-13-301;

36 (14) Rape, as prohibited in § 5-14-103;

- 1 (15) *Sexual indecency with a child, as prohibited in § 5-14-110;*
2 (16) *Sexual assault in the first degree, second degree, third*
3 *degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;*
4 (17) *Incest, as prohibited in § 5-26-202;*
5 (18) *Offenses against the family, as prohibited in §§ 5-26-303 -*
6 *5-26-306;*
7 (19) *Endangering the welfare of incompetent person in the first*
8 *degree, as prohibited in § 5-27-201;*
9 (20) *Endangering the welfare of a minor in the first degree, as*
10 *prohibited in § 5-27-203;*
11 (21) *Permitting child abuse, as prohibited in § 5-27-221(a)(1)*
12 *and (3);*
13 (22) *Engaging children in sexually explicit conduct for use in*
14 *visual or print media, transportation of minors for prohibited sexual*
15 *conduct, pandering or possessing visual or print medium depicting sexually*
16 *explicit conduct involving a child, or use of a child or consent to use of a*
17 *child in a sexual performance by producing, directing, or promoting a sexual*
18 *performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,*
19 *and 5-27-403;*
20 (23) *Felony adult abuse, as prohibited by § 5-28-103;*
21 (24) *Theft of property, as prohibited in § 5-36-103;*
22 (25) *Theft by receiving, as prohibited in § 5-36-106;*
23 (26) *Arson, as prohibited in § 5-38-301;*
24 (27) *Burglary, as prohibited in § 5-39-201;*
25 (28) *Felony violation of the Uniform Controlled Substances Act,*
26 *§ 5-64-101 et seq., as prohibited in § 5-64-401;*
27 (29) *Promotion of prostitution in the first degree, as*
28 *prohibited in § 5-70-104;*
29 (30) *Stalking, as prohibited in § 5-71-229;*
30 (31) *Criminal attempt, criminal complicity, criminal*
31 *solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,*
32 *5-3-301, and 5-3-401, to commit any of the offenses listed in this*
33 *subsection;*
34 (32) *Forgery, as prohibited in § 5-37-201;*
35 (33) *Breaking or entering, as prohibited in § 5-39-202;*
36 (34) *Obtaining a controlled substance by fraud, as prohibited in*

1 § 5-64-403;

2 (35) Computer child pornography, as prohibited in § 5-27-603;

3 and

4 (36) Computer exploitation of a child in the first degree, as
5 prohibited in § 5-27-605.

6 (c) A qualified entity that is issued a provisional license based on
7 the criminal history of the operator may resubmit the application for
8 licensure with a new operator. If the qualified entity does not resubmit the
9 application within fifteen (15) days of the issuance of the provisional
10 license, then the qualified entity's license shall be immediately denied or
11 revoked.

12 (d)(1) The provisions of this section shall not be waived by the
13 licensing or requesting agency.

14 (2)(A) Except as provided in subdivision (d)(2)(B) of this
15 section, a conviction ~~for an~~ or plea of guilty or nolo contendere for a
16 felony or misdemeanor offense listed in subsection (b) of this section shall
17 not disqualify an applicant for employment if the date of conviction of the
18 offense is at least ten (10) years from the date of the application and the
19 individual has no criminal convictions of any type or nature during the ten-
20 year period. ~~To the extent that there is any conflict with § 17-1-103, this~~
21 ~~section shall be deemed to supersede § 17-1-103.~~

22 (B) Because of the serious nature of the offenses and the
23 close relationship to the type of work that is to be performed, the following
24 shall result in permanent disqualification of employment:

25 (i) Capital murder, as prohibited in § 5-10-101;

26 (ii) Murder in the first degree and murder in the
27 second degree, as prohibited in §§ 5-10-102 and 5-10-103;

28 (iii) Kidnapping, as prohibited in § 5-11-102;

29 (iv) Rape, as prohibited in § 5-14-103;

30 (v) Sexual assault in the first degree and second
31 degree, as prohibited in §§ 5-14-124 and 5-14-125;

32 (vi) Endangering the welfare of incompetent person
33 in the first degree, as prohibited in § 5-27-201;

34 (vii) Felony adult abuse, as prohibited by § 5-28-
35 103; and

36 (viii) Arson, as prohibited in § 5-38-301.

1 (e)(1) A qualified entity shall not be disqualified from licensure
2 when the operator has been found guilty of or has pleaded guilty or nolo
3 contendere to a misdemeanor if the offense did not involve exploitation of an
4 adult, abuse of a person, neglect of a person, theft, or sexual contact.

5 (2) An applicant, ElderChoices provider, or employee shall not
6 be disqualified from permanent employment or providing care to the elderly or
7 an individual with a disability, or both, when the applicant, provider, or
8 employee has been found guilty of or has pleaded guilty or nolo contendere to
9 a misdemeanor if the offense did not involve exploitation of an adult, abuse
10 of a person, neglect of a person, theft, or sexual contact.

11 (f) For purposes of this section, an expunged record of a conviction
12 or plea of guilty or nolo contendere to an offense listed in subsection (b)
13 of this section shall not be considered a conviction, guilty plea, or nolo
14 contendere plea to the offense unless the offense is also listed in
15 subdivision (d)(2)(B) of this section.

16 ~~(f)~~(g) If an operator or qualified entity fails or refuses to
17 cooperate in obtaining criminal records checks, such circumstances shall be
18 grounds to deny or revoke the qualified entity's license or other operating
19 authority, provided the process of obtaining criminal records checks shall
20 not delay the process of the application for a license or other operational
21 authority.

22 ~~(g)~~(h) Any unlicensed qualified entity violating this subchapter shall
23 be guilty of a Class A misdemeanor for each violation.

24 (i) To the extent that there is any conflict with § 17-1-103, this
25 section shall supersede § 17-1-103.

26
27 SECTION 7. Arkansas Code § 20-48-804 is amended to read as follows:

28 20-48-804. Disqualification from employment - Denial or revocation -
29 Penalties.

30 (a)(1) A Except as provided in subsection (f) of this section, a
31 licensing agency shall issue a determination that a person is disqualified
32 from employment with a service provider if the person has been found guilty
33 of or pleaded guilty or nolo contendere to any of the offenses listed in
34 subsection (b) of this section.

35 (2) A Except as provided in subsection (f) of this section, a
36 service provider shall not knowingly employ a person who has pleaded guilty

1 or *nolo contendere* to or has been found guilty of any of the offenses listed
2 in subsection (b) of this section by any court in the State of Arkansas or of
3 any similar offense by a court in another state or of any similar offense by
4 a federal court.

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

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

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

9 (4) Negligent homicide, as prohibited in § 5-10-105;

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

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

13 (7) Permanent detention or restraint, as prohibited in § 5-11-
14 106;

15 (8) Robbery, as prohibited in § 5-12-102;

16 (9) Aggravated robbery, as prohibited in § 5-12-103;

17 (10) Battery, as prohibited in §§ 5-13-201 - 5-13-203;

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

19 (12) Introduction of controlled substance into body of another
20 person, as prohibited in § 5-13-210;

21 (13) Terroristic threatening in the first degree, as prohibited
22 in § 5-13-301;

23 (14) Rape, as prohibited in § 5-14-103;

24 (15) Sexual indecency with a child, as prohibited in § 5-14-110;

25 (16) Sexual assault in the first degree, second degree, third
26 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

27 (17) Incest, as prohibited in § 5-26-202;

28 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
29 5-26-306;

30 (19) Endangering the welfare of an incompetent person in the
31 first degree, as prohibited in § 5-27-201;

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

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

36 (22) Engaging children in sexually explicit conduct for use in

1 visual or print media, transportation of minors for prohibited sexual
2 conduct, pandering or possessing visual or print medium depicting sexually
3 explicit conduct involving a child, or use of a child or consent to use of a
4 child in a sexual performance by producing, directing, or promoting a sexual
5 performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-
6 27-402, and 5-27-403;

7 (23) Felony adult abuse, as prohibited in § 5-28-103;

8 (24) Theft of property, as prohibited in § 5-36-103;

9 (25) Theft by receiving, as prohibited in § 5-36-106;

10 (26) Arson, as prohibited in § 5-38-301;

11 (27) Felony violation of the Uniform Controlled Substances Act,
12 § 5-64-101 et seq., as prohibited in § 5-64-401;

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

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

16 (30) Stalking, as prohibited in § 5-71-229;

17 (31) Forgery, as prohibited in § 5-37-201;

18 (32) Breaking or entering, as prohibited in § 5-39-202;

19 (33) Obtaining a controlled substance by fraud, as prohibited in
20 § 5-64-403;

21 (34) Criminal attempt, criminal complicity, criminal
22 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
23 5-3-301, and 5-3-401, to commit any of the offenses listed in this
24 subsection;

25 (35) Computer child pornography, as prohibited in § 5-27-603;

26 and

27 (36) Computer exploitation of a child in the first degree, as
28 prohibited in § 5-27-605.

29 (c)(1) The provisions of this section shall not be waived by the
30 licensing or requesting agency. Except as provided in subdivision (c)(2) of
31 this section, one (1) conviction for an offense listed in subsection (b) of
32 this section shall not disqualify an applicant for employment if the date of
33 the conviction is at least ten (10) years prior to the date of the
34 application and the individual has had no criminal convictions of any type or
35 nature during the ten-year period.

36 (2) Because of the serious nature of the offenses and the close

1 relationship to the type of work that is to be performed, the following
2 offenses shall result in permanent disqualification of employment:

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

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

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

7 (D) Rape, as prohibited in § 5-14-103;

8 (E) Sexual assault in the first degree and second degree,
9 as prohibited in §§ 5-14-124 and 5-14-125;

10 (F) Endangering the welfare of an incompetent person in
11 the first degree, as prohibited in § 5-27-201;

12 (G) Felony adult abuse, as prohibited in § 5-28-103; and

13 (H) Arson, as prohibited in § 5-38-301.

14 (3) An applicant or employee shall not be disqualified from
15 permanent employment if the applicant or employee has been found guilty of or
16 has pleaded guilty or nolo contendere to a misdemeanor if the offense did not
17 involve exploitation of an adult, abuse of a person, neglect of a person,
18 theft, or sexual contact.

19 (d) If a service provider fails or refuses to cooperate in obtaining
20 criminal history records checks, those circumstances shall be grounds to deny
21 or revoke the service provider's license or other operating authority.

22 (e) Any service provider violating this subchapter shall be guilty of
23 a Class A misdemeanor for each violation.

24 (f) For purposes of this section, an expunged record of a conviction
25 or plea of guilty or nolo contendere to an offense listed in subsection (b)
26 of this section shall not be considered a conviction, guilty plea, or nolo
27 contendere plea to the offense unless the offense is also listed in
28 subdivision (c)(2) of this section.

29
30 SECTION 8. Arkansas Code § 21-15-103 is amended to read as follows:

31 21-15-103. Deadline - Scope of check - Report - Notice - Discharge.

32 (a)(1)(A) State agencies shall ensure that all employees in designated
33 positions will have applied for criminal history checks by October 1, 2000,
34 and shall adopt a rule that prescribes how criminal background checks on
35 incumbent employees will be phased in over the period of time prior to July
36 1, 2000.

1 (B) The rule shall require incumbent employees to apply
2 for criminal history checks in conjunction with the employee's anniversary of
3 employment or any time before that date.

4 (2) State agencies shall ensure that all employees in designated
5 positions will have applied for central registry checks by October 1, 2002,
6 and shall adopt a rule that prescribes how central registry checks on
7 incumbent employees will be phased in over the period of time prior to July
8 1, 2002. The rule shall require incumbent employees to apply for central
9 registry checks in conjunction with the employee's anniversary of employment
10 or any time before that date.

11 (3) In accordance with subdivisions (a)(1) and (2) of this
12 section, each employee of a state agency in a designated position shall
13 complete a criminal history check form and a central registry check form
14 obtained from the state agency and shall submit the form to the state agency.
15 The state agency shall forward:

16 (A)(i) The criminal history check form to the
17 Identification Bureau of the Department of Arkansas State Police.

18 (ii) The state agency shall pay any fee associated
19 with the criminal history check on behalf of the employee; and

20 (B)(i) The central registry check to the Child
21 Maltreatment Central Registry, the Adult Abuse Central Registry, and the
22 Certified Nurses Assistants Central Registry to review the databases.

23 (ii) The state agency shall pay any fee associated
24 with the central registry checks.

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

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

34 (c)(1) Upon completion of a criminal history check on an employee, the
35 bureau shall issue a report to the state agency.

36 (2)(A) The state agency shall determine whether the employee is

1 *disqualified from employment under subsection (g) of this section.*

2 *(B) If the state agency determines that an employee is*
3 *disqualified from employment, then the state agency shall discharge the*
4 *employee.*

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

8 *(e) If an applicant has been named as an offender or perpetrator in a*
9 *true, substantiated, or founded report from the Child Maltreatment Central*
10 *Registry, the Adult Abuse Central Registry, or the Certified Nursing*
11 *Assistant/Employment Clearance Registry, the state agency shall discharge the*
12 *employee.*

13 *(f) A state agency shall inform all employees in designated positions*
14 *that:*

15 *(1) Continued employment is contingent upon the results of a*
16 *criminal history check and a central registry check; and*

17 *(2) The employee has the right to obtain a copy of his or her:*

18 *(A) Criminal history report from the bureau; and*

19 *(B) Central registry report from the registries.*

20 *(g) A Except as provided in subdivision (h)(1) of this section, a*
21 *state agency shall discharge from employment in a designated position any*
22 *person who has pleaded guilty or nolo contendere to, or been found guilty of,*
23 *any of the following offenses by any court in the State of Arkansas or of any*
24 *similar offense by a court in another state or of any similar offense by a*
25 *federal court, but only after an opportunity for a hearing conducted in*
26 *accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et*
27 *seq.:*

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

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

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

32 *(4) Negligent homicide, as prohibited in § 5-10-105;*

33 *(5) Kidnapping, as prohibited in § 5-11-102;*

34 *(6) False imprisonment in the first degree, as prohibited in §*
35 *5-11-103;*

36 *(7) Permanent detention or restraint, as prohibited in § 5-11-*

- 1 106;
- 2 (8) Robbery, as prohibited in § 5-12-102;
- 3 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 4 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 5 (11) Aggravated assault, as prohibited in § 5-13-204;
- 6 (12) Introduction of controlled substance into body of another
- 7 person, as prohibited in § 5-13-210;
- 8 (13) Terroristic threatening in the first degree, as prohibited
- 9 in § 5-13-301;
- 10 (14) Rape, as prohibited in § 5-14-103;
- 11 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 12 (16) Sexual assault in the first degree, second degree, third
- 13 degree, or fourth degree as prohibited in §§ 5-14-124 - 5-14-127;
- 14 (17) Incest, as prohibited in § 5-26-202;
- 15 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
- 16 5-26-306;
- 17 (19) Endangering the welfare of an incompetent person in the
- 18 first degree, as prohibited in § 5-27-201;
- 19 (20) Endangering the welfare of a minor in the first degree, as
- 20 prohibited in § 5-27-203;
- 21 (21) Permitting abuse of a child, as prohibited in § 5-27-
- 22 221(a)(1) and (3);
- 23 (22) Engaging children in sexually explicit conduct for use in
- 24 visual or print medium, transportation of minors for prohibited sexual
- 25 conduct, pandering or possessing visual or print medium depicting sexually
- 26 explicit conduct involving a child, or the use of a child or consent to the
- 27 use of a child in a sexual performance by producing, directing, or promoting
- 28 a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-
- 29 27-305, 5-27-402, and 5-27-403;
- 30 (23) Felony adult abuse, as prohibited in § 5-28-103;
- 31 (24) Theft of property, as prohibited in § 5-36-103;
- 32 (25) Theft by receiving, as prohibited in § 5-36-106;
- 33 (26) Arson, as prohibited in § 5-38-301;
- 34 (27) Burglary, as prohibited in § 5-39-201;
- 35 (28) Felony violation of the Uniform Controlled Substances Act,
- 36 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

1 (29) Promotion of prostitution in the first degree, as
2 prohibited in § 5-70-104;

3 (30) Stalking, as prohibited in § 5-71-229;

4 (31) Criminal attempt, criminal complicity, criminal
5 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
6 5-3-301, and 5-3-401, to commit any of the offenses listed in this
7 subsection;

8 (32) Computer child pornography, as prohibited in § 5-27-603;
9 and

10 (33) Computer exploitation of a child in the first degree, as
11 prohibited in § 5-27-605.

12 (h)(1) For purposes of this section, an expunged record of a
13 conviction or plea of guilty or nolo contendere to an offense listed in
14 subsection (g) of this section shall not be considered a conviction, guilty
15 plea, or nolo contendere plea to the offense unless the offense is also
16 listed in subdivision (h)(2) of this section.

17 (2) Because of the serious nature of the offenses and the close
18 relationship to the type of work that is to be performed, the following shall
19 result in permanent disqualification:

20 (A) Capital murder, as prohibited in § 5-10-101;

21 (B) Murder in the first degree and murder in the second
22 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

24 (D) Rape, as prohibited in § 5-14-103;

25 (E) Sexual assault in the first degree and second degree,
26 as prohibited in §§ 5-14-124 and 5-14-125;

27 (F) Endangering the welfare of a minor in the first degree
28 and endangering the welfare of a minor in the second degree, as prohibited in
29 §§ 5-27-203 and 5-27-204;

30 (G) Incest, as prohibited in § 5-26-202;

31 (H) Arson, as prohibited in § 5-38-301;

32 (I) Endangering the welfare of incompetent person in the
33 first degree, as prohibited in § 5-27-201; and

34 (J) Adult abuse that constitutes a felony, as prohibited
35 in § 5-28-103.

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/s/ Verkamp