

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

# A Bill

HOUSE BILL 2116

4  
5 By: Representative Mahony  
6 By: Senator Broadway

## For An Act To Be Entitled

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9  
10 AN ACT TO AMEND ARKANSAS LAWS CONCERNING THE  
11 DISSEMINATION OF CRIMINAL HISTORY INFORMATION;  
12 AND FOR OTHER PURPOSES.

## Subtitle

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15 AN ACT TO AMEND ARKANSAS LAWS CONCERNING  
16 THE DISSEMINATION OF CRIMINAL HISTORY  
17 INFORMATION.

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19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21  
22 SECTION 1. Arkansas Code § 12-12-1012 is amended to read as follows:  
23 12-12-1012. Fees for noncriminal justice record searches.

24 (a)(1)(A) A fee may be charged for providing criminal history  
25 information for noncriminal justice purposes.

26 (B) However, the fee for providing information may be  
27 waived at the request of a:

28 (i) A local school district, for providing  
29 information concerning volunteers in public school programs; or

30 (ii) A nonprofit organization whose purpose is to  
31 serve juveniles, for providing information concerning volunteers to the  
32 nonprofit organization. This exemption shall not be applicable to child care  
33 facilities whose owners, operators, or employees are required under § 20-78-  
34 601 et seq. to apply to the Identification Bureau of the Department of  
35 Arkansas State Police for a criminal records check.

36 (2)(A) The amount of ~~such~~ the fee for electronic Internet



1 submission will be determined jointly by the Identification Bureau of the  
 2 Department of Arkansas State Police and the central repository and shall not  
 3 exceed twenty dollars (\$20.00), exclusive of any third-party electronic  
 4 processing fee charges.

5 (B) Effective July 1, 2005, the amount of the fee for  
 6 providing information by means other than the Internet shall be determined  
 7 jointly by the bureau and the central repository and shall not exceed thirty  
 8 dollars (\$30.00).

9 (b)(1) Except as provided in subdivision (b)(2) of this section, All  
 10 all fees shall be deposited immediately in the State Treasury as special  
 11 revenue to the credit of the State Police Equipment Fund, which is created on  
 12 the books of the Treasurer of State, Auditor of State, and Chief Fiscal  
 13 Officer of the State, there to be used for the acquisition of an automated  
 14 fingerprint identification system.

15 (2)(A) ~~Effective July 1, 1997, such fees~~ Fees collected under  
 16 subdivision (a)(2)(A) of this section shall ~~then~~ be credited fifty percent  
 17 (50%) to the Crime Information System Fund and fifty percent (50%) to the  
 18 State Police Equipment Fund, there to be used for the continued operation and  
 19 expansion of the automated criminal history system and for the operation and  
 20 expansion of the automated fingerprint ~~identification~~ identification system,  
 21 subject to legislative appropriations. Any balance in the State Police  
 22 Equipment Fund on June 30, 1997, may also be used for the operation and  
 23 expansion of the automated fingerprint identification system.

24 (B) Fees collected under subdivision (a)(2)(B) of this  
 25 section shall be deposited in the State Treasury as special revenue to the  
 26 credit of the State Police Equipment Fund.

27 (3) Special revenues deposited in the Crime Information System  
 28 Fund and the State Police Equipment Fund may be used for personal services  
 29 and operating expenses as provided by law, for conducting criminal background  
 30 checks for noncriminal justice purposes, and such special revenues unused at  
 31 the end of any fiscal year shall be carried forward.

32  
 33 SECTION 2. Arkansas Code § 12-12-1502 is amended to read as follows:  
 34 12-12-1502. Intent.

35 (a) It is the intent of this subchapter to:

36 (1) Provide one (1) source for obtaining the most accurate and

1 complete criminal history information; and

2 (2) Allow dissemination of criminal history information to  
 3 employers, ~~and~~ professional licensing boards, and any entity mandated by  
 4 Arkansas law to perform background checks through the Arkansas State Police,  
 5 pertaining to all felony arrest information and all conviction information.

6 (b)(1) The Department of Arkansas State Police shall be the agency  
 7 responsible for the dissemination of criminal history information under this  
 8 subchapter.

9 (2) The Arkansas Crime Information Center shall be authorized to  
 10 disseminate criminal history information as authorized by law.

11 (c) Felony arrest information that has had a disposition of acquittal,  
 12 dismissal, or nolle prosequi entered into the central repository shall not be  
 13 released under this subchapter.

14

15 SECTION 3. Arkansas Code § 12-12-1503 is amended to read as follows:  
 16 12-12-1503. Definitions.

17 For purposes of this subchapter:

18 (1) "Administration of criminal justice" means performing  
 19 functions of investigation, apprehension, detention, prosecution,  
 20 adjudication, correctional supervision, or rehabilitation of accused persons  
 21 or criminal offenders, including criminal identification activities and the  
 22 collection, maintenance, and dissemination of criminal justice information;

23 (2)(A) "Arrest records or arrest information" means felony  
 24 arrest information in which conviction or disposition information has not  
 25 been entered into the central repository.

26 (B) "Arrest records or arrest information" does not  
 27 include misdemeanor arrest information or felony arrest information that has  
 28 a disposition of acquittal, dismissal, or nolle prosequi entered into the  
 29 central repository;

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

33 (4) "Central repository" means the Arkansas Crime Information  
 34 Center, which collects, maintains, and disseminates criminal history  
 35 information;

36 (5)~~(A)~~ "Conviction information" means criminal history

1 information disclosing that a person has pleaded guilty or nolo contendere to  
 2 or was found guilty of a criminal offense in a court of law, together with  
 3 sentencing information;

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

6 (6)(A) "Criminal history information" means a record compiled by  
 7 the central repository or the bureau on an individual consisting of names,  
 8 identification data, notations of arrests, detentions, indictments,  
 9 informations, or other formal criminal charges obtained from criminal justice  
 10 agencies, including any dispositions of the charges, as well as notations on  
 11 correctional supervision and release.

12 (B) The following are not included in the definition of  
 13 "criminal history information":

14 (i) Fingerprint records on individuals not involved  
 15 in the criminal justice system, juvenile records, or driver history records;

16 (ii) Original records of entry maintained by  
 17 criminal justice agencies, court indices, records of public judicial  
 18 proceedings, court decisions, opinions, and information disclosed during  
 19 public judicial proceedings; and

20 (iii) Records when the release is made by the  
 21 specific court, law enforcement agency, or prosecutor that created the  
 22 records.

23 (C) Subdivision (5) of this section does not prohibit the  
 24 release of information by the specific agency that created the record;

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

29 (8)(A) "Disposition" means information describing the outcome of  
 30 any criminal charges, including notations that law enforcement officials have  
 31 elected not to refer the matter to a prosecutor, that a prosecutor has  
 32 elected not to begin criminal proceedings, or that proceedings have been  
 33 indefinitely postponed.

34 (B) "Disposition" includes acquittals, dismissals,  
 35 probations, charges pending due to mental disease or defect, guilty pleas,  
 36 nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender

1 determinations, first offender programs, pardons, commuted sentences,  
 2 mistrials in which the defendant is discharged, executive clemencies,  
 3 paroles, releases from correctional supervision, deaths, or a finding that  
 4 the person must register as a sex offender;

5 (9)(A) "Dissemination" means disclosing criminal history  
 6 information or disclosing the absence of criminal history information to any  
 7 ~~agency, professional licensing board, business designated by state or federal~~  
 8 ~~law, or any other employer legally doing business in and paying taxes to the~~  
 9 ~~State of Arkansas~~ requestor who has applied and been approved by the  
 10 Department of Arkansas State Police to receive the information.

11 (B) "Dissemination" does not mean:

12 (i) The furnishing of information by a department to  
 13 personnel of a participating agency when criminal justice agencies jointly  
 14 participate in the maintenance of a single recordkeeping system as an  
 15 alternative to maintaining separate records; and

16 (ii) The furnishing of information by any criminal  
 17 justice agency to another for the purpose of the administration of criminal  
 18 justice;

19 (10) "Pending information" means felony criminal history  
 20 information in some stage of active prosecution or processing; and

21 (11) "Requestor" means the employer, ~~or~~ professional licensing  
 22 board, or any entity mandated by Arkansas law to perform criminal background  
 23 checks through the Arkansas State Police, that has submitted an inquiry into  
 24 a subject's criminal history information under this subchapter; ~~and.~~

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

28  
 29 SECTION 4. Arkansas Code § 12-12-1506 is amended to read as follows:

30 12-12-1506. Unrestricted information - Records - Immunity from civil  
 31 liability.

32 (a)(1) All conviction information and felony arrest records may be  
 33 disseminated as provided in this subchapter.

34 (2) Any criminal history information of felony arrest records  
 35 and all conviction information which pertains to a person currently being  
 36 processed by the criminal justice system, including the entire period of

1 correctional supervision extending through final discharge from parole, may  
 2 be disseminated without restriction.

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

7 (B) The information pertaining to dissemination required  
 8 to be maintained shall be retained for a period of not less than three (3)  
 9 years for security purposes.

10 (4)(A)(i) Each ~~employer or professional licensing board~~  
 11 requestor that is allowed access to criminal history information under this  
 12 subchapter shall maintain in its files for at least three (3) years the  
 13 written consent to obtain the criminal history information given by the  
 14 applicant or employee.

15 (ii) Any ~~employer or professional licensing board~~  
 16 requestor that is granted access to criminal history information under this  
 17 subchapter shall not disseminate the criminal history information.

18 (B) Those files and consent forms shall be subject to  
 19 inspection by the Department of Arkansas State Police.

20 (b) This section allows the dissemination of information concerning  
 21 persons who are required to register as sex offenders.

22 (c) Criminal justice agencies and their employees and officials shall  
 23 be immune from civil liability except in instances of gross negligence or  
 24 intentional malice for dissemination of criminal history information under  
 25 this subchapter.

26  
 27 SECTION 5. Arkansas Code § 12-12-1507 is amended to read as follows:  
 28 12-12-1507. Administration.

29 (a)~~(1)~~ Release of criminal history information under this subchapter  
 30 shall be made only by the Identification Bureau of the Department of Arkansas  
 31 State Police and the Arkansas Crime Information Center as authorized by law.

32 (2) The department and the center ~~shall~~ may adopt rules and  
 33 regulations consistent with the provisions and intent of this subchapter.

34 (b) The department and the center are authorized to contract with the  
 35 Information Network of Arkansas under the Information Network of Arkansas  
 36 Act, § 25-27-101 et seq., or any other qualified third-party vendor in the

1 establishment of the gateway or means of electronically processing  
 2 transactions under this subchapter.

3 (c)(1) The department shall not process a request for a Federal Bureau  
 4 of Investigation background check unless a corresponding state background  
 5 check through the department's identification bureau has also been properly  
 6 requested pursuant to this subchapter.

7 (2) The requirements of subdivision (c)(1) of this section may  
 8 be waived upon written authorization of the Director of the Department of  
 9 Arkansas State Police.

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 11 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the  
 12 General Assembly of the State of Arkansas that the dissemination of complete,  
 13 accurate, and timely criminal history information is necessary for the  
 14 protection of the people of the State of Arkansas; and that this act is  
 15 needed to provide necessary access to criminal history information.  
 16 Therefore, an emergency is declared to exist and this act being immediately  
 17 necessary for the preservation of the public peace, health, and safety shall  
 18 become effective on:

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

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

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