

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: H3/7/05

# A Bill

HOUSE BILL 2116

5 *By: Representatives Thompson, Mahony*  
6 By: Senator Broadway  
7

## 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.  
13

### Subtitle

14  
15 AN ACT TO AMEND ARKANSAS LAWS CONCERNING  
16 THE DISSEMINATION OF CRIMINAL HISTORY  
17 INFORMATION.  
18  
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 into the State Treasury as special revenue as  
26 follows:

27 (i) Ten dollars (\$10.00) of each fee collected shall  
28 be credited to the Crime Information System Fund; and

29 (ii) The portion of a collected fee which exceeds  
30 ten dollars (\$10.00) shall be credited to the State Police Equipment Fund.

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

36

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

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

4 (1) Provide one (1) source for obtaining the most accurate and  
5 complete criminal history information; and

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

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

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

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

18  
19 SECTION 3. Arkansas Code § 12-12-1503 is amended to read as follows:  
20 12-12-1503. Definitions.

21 For purposes of this subchapter:

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

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

30 (B) "Arrest records or arrest information" does not  
31 include misdemeanor arrest information or felony arrest information that has  
32 a disposition of acquittal, dismissal, or nolle prosequi entered into the  
33 central repository;

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

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

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

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

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

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

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

20 (ii) Original records of entry maintained by  
21 criminal justice agencies, court indices, records of public judicial  
22 proceedings, court decisions, opinions, and information disclosed during  
23 public judicial proceedings; and

24 (iii) Records when the release is made by the  
25 specific court, law enforcement agency, or prosecutor that created the  
26 records.

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

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

33 (8)(A) "Disposition" means information describing the outcome of  
34 any criminal charges, including notations that law enforcement officials have  
35 elected not to refer the matter to a prosecutor, that a prosecutor has  
36 elected not to begin criminal proceedings, or that proceedings have been

1 indefinitely postponed.

2 (B) "Disposition" includes acquittals, dismissals,  
3 probations, charges pending due to mental disease or defect, guilty pleas,  
4 nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender  
5 determinations, first offender programs, pardons, commuted sentences,  
6 mistrials in which the defendant is discharged, executive clemencies,  
7 paroles, releases from correctional supervision, deaths, or a finding that  
8 the person must register as a sex offender;

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

15 (B) "Dissemination" does not mean:

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

20 (ii) The furnishing of information by any criminal  
21 justice agency to another for the purpose of the administration of criminal  
22 justice;

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

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

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

32

33 SECTION 4. Arkansas Code § 12-12-1506 is amended to read as follows:  
34 12-12-1506. Unrestricted information - Records - Immunity from civil  
35 liability.

36 (a)(1) All conviction information and felony arrest records may be

1 disseminated as provided in this subchapter.

2 (2) Any criminal history information of felony arrest records  
3 and all conviction information which pertains to a person currently being  
4 processed by the criminal justice system, including the entire period of  
5 correctional supervision extending through final discharge from parole, may  
6 be disseminated without restriction.

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

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

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

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

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

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

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

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31 SECTION 5. Arkansas Code § 12-12-1507 is amended to read as follows:  
32 12-12-1507. Administration.

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

36 (2) The department and the center ~~shall~~ may adopt rules and

1 regulations consistent with the provisions and intent of this subchapter.

2 (b) The department and the center are authorized to contract with the  
3 Information Network of Arkansas under the Information Network of Arkansas  
4 Act, § 25-27-101 et seq., or any other qualified third-party vendor in the  
5 establishment of the gateway or means of electronically processing  
6 transactions under this subchapter.

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

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

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

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

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

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

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30 /s/ Mahony, et al  
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