

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

SENATE BILL 401

4  
5 By: Senator Faris  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE CRIMINAL BACKGROUND CHECK  
10 ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO AMEND THE CRIMINAL BACKGROUND  
14 CHECK ACT.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code §§ 21-15-101 – 21-15-104 are amended to read  
20 as follows:

21 21-15-101. Definitions.

22 As used in this subchapter:

23 (1) "Applicant" means a person applying for employment  
24 with a state agency;

25 (2) "Central registry check" means a review of the databases of  
26 the Child Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care  
27 Facility Resident Maltreatment Central Registry, and the Certified Nursing  
28 Assistant/Employment Clearance Registry maintained by the Office of Long-Term  
29 Care of the Division of Medical Services of the Department of Human Services  
30 pursuant to 42 C.F.R. § 483.156 and § 20-10-203;

31 (3) "Child" means a minor under the age of eighteen (18);

32 (4)(A) "Criminal history check" means a criminal history report  
33 that includes convictions for offenses for which any person has pleaded  
34 guilty or nolo contendere to, or has been found guilty of, regardless of any  
35 subsequent expungement of the conviction from the person's criminal record.

36 (B) "Criminal history check" does not include convictions



1 that are reversed by an appellate court or for which pleas were not accepted  
2 or were rejected because the person lacked capacity to enter a plea;

3 ~~(4)~~(5) "Designated position" means a position in which a person  
4 is employed by a state agency to provide care, supervision, treatment, or any  
5 other services to the elderly, to mentally ill or developmentally disabled  
6 persons, to individuals with mental illnesses, or to children who reside in  
7 any state-operated facility or a position in which the applicant or employee  
8 will have direct contact with a child;

9 (6) "Designated financial or information technology position"  
10 means a position designated by a director of a division or office within the  
11 Department of Human Services in which the person placed in the position:

12 (A) Has the authority or capability via computer access or  
13 otherwise to receive payments or to issue, initiate, or approve a contract,  
14 grant, warrant, payment, or procurement in any form;

15 (B) Approves security access to information systems;

16 (C) Authenticates and configures user security access to  
17 information systems;

18 (D) Acts in the capacity of information technology  
19 network, application, or system administrator;

20 (E) Manages or directs information technology network,  
21 application, or system administrators; or

22 (F) Develops, designs, programs, or maintains information  
23 technology networks, applications, or systems;

24 ~~(5)~~(7) "Developmentally disabled person" means a person with a  
25 disability that is attributable to:

26 (A) Mental retardation, cerebral palsy, epilepsy, or  
27 autism;

28 (B) Any other condition of a person found to be closely  
29 related to mental retardation because it results in an impairment of general  
30 intellectual functioning or adaptive behavior similar to those of mentally  
31 retarded persons or requires treatment and services similar to those required  
32 for such persons; or

33 (C) Dyslexia resulting from a disability associated with  
34 mental retardation, cerebral palsy, epilepsy, or autism;

35 ~~(6)~~(8) "Direct contact" means the ability to interview,  
36 question, examine, interact with, talk with, or communicate with a child

1 without being in the physical presence of a person other than the child;

2 ~~(7)~~(9) "Elderly" means persons age sixty-five (65) or older;

3 ~~(8)~~(10)(A) "Mentally ill persons" means those who suffer from a  
4 substantial impairment of emotional processes, or of the ability to exercise  
5 conscious control of their actions, or of the ability to perceive reality or  
6 to reason when the impairment is manifested in instances of extremely  
7 abnormal behavior or extremely faulty perceptions.

8 (B) "Mentally ill persons" does not include persons whose  
9 impairment is solely caused by epilepsy, continuous or noncontinuous periods  
10 of intoxication caused by substances such as alcohol or drugs, or dependence  
11 upon or addiction to any substance such as alcohol or drugs; and

12 ~~(9)~~(11)(A) "State agency" means any agency, authority, board,  
13 bureau, commission, council, department, office, or officer of the state  
14 receiving an appropriation by the General Assembly.

15 (B) "State agency" shall not include municipalities,  
16 townships, counties, school districts, and state-supported institutions of  
17 higher learning.

18  
19 21-15-102. Positions involving direct contact with children and with  
20 mentally ill and developmentally disabled persons.

21 (a)(1)(A) When a person applies for employment with a state agency in  
22 a designated position and if the state agency intends to make an offer of  
23 employment to the applicant, the applicant shall complete a criminal history  
24 check form and a central registry check form obtained from the state agency  
25 and shall submit the form to the state agency as part of the application  
26 process.

27 (B) If the state agency intends to make an offer of  
28 employment to the applicant, the state agency within five (5) days of the  
29 decision shall forward:

30 (i)(a) The criminal history check form to the  
31 ~~Identification Bureau of the Department of Arkansas State Police~~ agency or  
32 company conducting the criminal background check and request ~~the bureau to~~  
33 ~~review the bureau's~~ a review of the database of criminal history ~~checks on~~  
34 ~~state agency employees in designated positions.~~

35 (b) Within three (3) days of the receipt of a  
36 request to review the database, the ~~bureau~~ agency or company conducting the

1 criminal background check shall notify the state agency if the database  
2 contains any criminal history records on the applicant; and

3 (ii)(a) The central registry check form to the Child  
4 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility  
5 Resident Maltreatment Central Registry, and the Certified Nursing  
6 Assistant/Employment Clearance Registry for a central registry check.

7 (b) The state agency shall pay any fee  
8 associated with the central registry check on behalf of the applicant.

9 (c) Within three (3) days of the receipt of a  
10 request for a central registry check, the central registry shall notify the  
11 state agency if the database contains any information naming the applicant as  
12 an offender or perpetrator of child or adult abuse.

13 (2) If no criminal history or central registry records regarding  
14 the applicant are found in the database, then the state agency may make an  
15 offer of temporary employment to the applicant while the ~~bureau~~ agency or  
16 company conducting the criminal background check completes a criminal history  
17 check and the state agency determines whether the applicant is disqualified  
18 from employment under subsection (f) of this section.

19 (3)(A) If a criminal history record regarding the applicant is  
20 found in the ~~bureau's~~ agency's or company's database, then the applicant is  
21 temporarily disqualified from employment until the state agency determines  
22 whether the applicant is disqualified from employment under subsection (f) of  
23 this section.

24 (B) If the state agency determines that the applicant is  
25 not disqualified, then the state agency may continue to temporarily employ  
26 the applicant while the bureau completes a criminal history check.

27 (4) If an applicant has been named as an offender or perpetrator  
28 in a true, substantiated, or founded report from the Child Maltreatment  
29 Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident  
30 Maltreatment Central Registry, or the Certified Nursing Assistant/Employment  
31 Clearance Registry, the applicant shall be immediately disqualified.

32 (b)(1) Except as provided in subdivision (b)(2) of this section, the  
33 ~~bureau~~ agency or company shall conduct a state criminal history check and a  
34 national criminal history check on an applicant upon receiving a criminal  
35 history check request from a state agency.

36 (2) If the state agency can verify that the applicant has been

1 employed by a state agency in a designated position within sixty (60) days  
2 before the application or has lived continuously in the State of Arkansas for  
3 the past five (5) years, the ~~bureau~~ agency or company conducting the criminal  
4 background check shall conduct only a state criminal history check on the  
5 applicant.

6 (c)(1) Upon completion of a criminal history check on an applicant,  
7 the ~~bureau~~ agency or company shall issue a report to the state agency.

8 (2)(A) The state agency shall determine whether the applicant is  
9 disqualified from employment under subsection (f) of this section.

10 (B) If the state agency determines that an applicant is  
11 disqualified from employment, then the state agency shall deny employment to  
12 the applicant.

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

16 (e) Before making a temporary or permanent offer of employment in a  
17 designated position, a state agency shall inform applicants that:

18 (1) Continued employment is contingent upon the results of a  
19 criminal history check and a central registry check; and

20 (2) The applicant has the right to obtain a copy of his or her:

21 (A) Criminal history report from the bureau; and

22 (B) Central registry report from the registries.

23 (f) No person shall be eligible for employment with a state agency in  
24 a designated position if that person has pleaded guilty or nolo contendere  
25 to, or been found guilty of, any of the following offenses by any court in  
26 the State of Arkansas or of any similar offense by a court in another state  
27 or of any similar offense by a federal court regardless of any subsequent  
28 expungement of the conviction from the person's criminal record:

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

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

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

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

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

35 (6) False imprisonment in the first degree, as prohibited in §  
36 5-11-103;

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

1 §§ 5-64-101 – 5-64-608, as prohibited in § 5-64-401;

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

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

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

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

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

13  
14 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for  
15 persons in designated positions.

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

21 ~~(B) The rule shall require incumbent employees to apply~~  
22 ~~for criminal history checks in conjunction with the employee's anniversary of~~  
23 ~~employment or any time before that date. An incumbent employee in a~~  
24 ~~designated position shall have a subsequent criminal background check~~  
25 ~~completed within five (5) years of the initial criminal background check and~~  
26 ~~every five (5) years thereafter.~~

27 (2) State agencies shall ensure that all employees in designated  
28 positions will have applied for central registry checks by October 1, 2002,  
29 and shall adopt a rule that prescribes how central registry checks on  
30 incumbent employees will be phased in over the period of time prior to  
31 July 1, 2002. ~~The rule shall require incumbent employees to apply for~~  
32 ~~central registry checks in conjunction with the employee's anniversary of~~  
33 ~~employment or any time before that date. An incumbent employee in a~~  
34 ~~designated position shall have subsequent central registry checks completed~~  
35 ~~within five (5) years of the initial central registry check and every five~~  
36 ~~(5) years thereafter.~~

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

6 (A)(i) The criminal history check form to the  
7 ~~Identification Bureau of the Department of Arkansas State Police~~ agency or  
8 company conducting the criminal background check.

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

11 (B)(i) The central registry check to the Child  
12 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility  
13 Resident Maltreatment Central Registry, and the Certified Nurses Assistants  
14 Central Registry to review the databases.

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

17 (b)(1) Except as provided in subdivision (b)(2) of this section, the  
18 ~~bureau~~ agency or company conducting the criminal background check shall  
19 conduct a state criminal history check and a national criminal history check  
20 on an applicant upon receiving a criminal history check request from a state  
21 agency.

22 (2) If the state agency can verify that the applicant has been  
23 employed by a state agency in a designated position within sixty (60) days  
24 before the application or has lived continuously in the State of Arkansas for  
25 the past five (5) years, the ~~bureau~~ agency or company conducting the criminal  
26 background check shall conduct only a state criminal history check on the  
27 applicant.

28 (c)(1) Upon completion of a criminal history check on an employee, the  
29 ~~bureau~~ agency or company conducting the criminal background check shall issue  
30 a report to the state agency.

31 (2)(A) The state agency shall determine whether the employee is  
32 disqualified from employment under subsection (g) of this section.

33 (B) If the state agency determines that an employee is  
34 disqualified from employment, then the state agency shall discharge the  
35 employee.

36 (d) When a national criminal history check is required under this



1 section, the criminal history check shall conform to the applicable federal  
2 standards and shall include the taking of fingerprints.

3 (e) If ~~an~~ a waiver applicant has been named as an offender or  
4 perpetrator in a true, substantiated, or founded report from the Child  
5 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility  
6 Resident Maltreatment Central Registry, or the Certified Nursing  
7 Assistant/Employment Clearance Registry, the state agency shall discharge the  
8 employee.

9 (f) A state agency shall inform all employees in designated positions  
10 that:

11 (1) Continued employment is contingent upon the results of a  
12 criminal history check and a central registry check; and

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

14 (A) Criminal history report from the ~~bureau~~ agency or  
15 company conducting the criminal background check; and

16 (B) Central registry report from the registries.

17 (g) A state agency shall discharge from employment in a designated  
18 position any person who has pleaded guilty or nolo contendere to, or been  
19 found guilty of, any of the following offenses by any court in the State of  
20 Arkansas or of any similar offense by a court in another state or of any  
21 similar offense by a federal court, ~~but only after an opportunity for a~~  
22 ~~hearing conducted in accordance with the Arkansas Administrative Procedure~~  
23 ~~Act, § 25-15-201 et seq.,~~ regardless of any subsequent expungement of the  
24 conviction from the person's criminal record:

25 (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 body of another  
4 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, or 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 abuse of a child, as prohibited in § 5-27-  
19 221(a)(1) and (3);
- 20          (22) Engaging children in sexually explicit conduct for use in  
21 visual or print medium, transportation of minors for prohibited sexual  
22 conduct, pandering or possessing visual or print medium depicting sexually  
23 explicit conduct involving a child, or the use of a child or consent to the  
24 use of a child in a sexual performance by producing, directing, or promoting  
25 a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-  
26 27-305, 5-27-402, 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 - 5-64-608, 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  
4 subsection;

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

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

9  
10 21-15-104. Waiver of exclusion or discharge requirement for persons in  
11 designated positions.

12 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-  
13 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a  
14 state agency upon the request of:

15 ~~(1)~~(A) A supervisor or other managerial employee in the  
16 state agency;

17 ~~(2)~~(B) An affected applicant for employment; or

18 ~~(3)~~(C) The person in a designated position who is subject  
19 to discharge.

20 (2) Application for a waiver must be made within five (5) days  
21 of receipt of the criminal background check.

22 (3) If the crime is a misdemeanor and more than five (5) years  
23 have lapsed since the conviction, the agency is not required to discharge an  
24 incumbent employee if a request for a waiver is timely made and if the waiver  
25 is ultimately granted.

26 (4) If the waiver is not granted and the waiver applicant is an  
27 incumbent employee who was not immediately discharged, the agency shall  
28 immediately discharge the employee.

29 (5) If the waiver is not granted and the waiver applicant is an  
30 applicant for employment, the agency is prohibited from hiring the applicant.

31 (6) If an incumbent employee was immediately discharged but was  
32 subsequently granted a waiver, the employee shall be immediately reinstated  
33 but shall not be entitled to retroactive relief, including back pay.

34 (b)(1) A waiver may be granted upon a preponderance of the evidence  
35 that the person is rehabilitated such that the public interest is not  
36 threatened by the person's employment.

1           (2) Evidence of rehabilitation may include: Circumstances for  
 2 ~~which a waiver may be granted shall include, but not be limited to, the~~  
 3 ~~following:~~

4           ~~(1)(A)~~ The age at which the crime or act was committed;  
 5           ~~(2)(B)~~ The circumstances surrounding the crime or act;  
 6           ~~(3)(C)~~ The length of time since the crime or act;  
 7           ~~(4)(D)~~ Subsequent work history;  
 8           ~~(5)(E)~~ Employment references;  
 9           ~~(6)(F)~~ Character references; and  
 10          ~~(7)(G)~~ Other evidence demonstrating that the applicant or  
 11 employee does not pose a threat to the health or safety of children or other  
 12 clients of the state agency.

13          (c) Because of the serious nature of the offenses and the close  
 14 relationship to the type of work that is to be performed, the following  
 15 offenses may not be waived by the state agency:

16           (1) Capital murder, as prohibited in § 5-10-101;  
 17           (2) Murder in the first degree and second degree, as prohibited  
 18 in §§ 5-10-102 and 5-10-103;  
 19           (3) Kidnapping, as prohibited in § 5-11-102;  
 20           (4) Rape, as prohibited in § 5-14-103;  
 21           (5) Sexual assault in the first degree and second degree, as  
 22 prohibited in §§ 5-14-124 and 5-14-125;  
 23           (6) Sexual indecency with a child, as prohibited in § 5-14-110;  
 24           (7) Endangering the welfare of an incompetent person in the  
 25 first degree, as prohibited in § 5-27-201;  
 26           (8) Endangering the welfare of a minor in the first degree, as  
 27 prohibited in § 5-27-203;  
 28           (9) Engaging children in sexually explicit conduct for use in  
 29 visual or print media, transportation of minors for prohibited sexual  
 30 conduct, pandering or possessing visual or print medium depicting sexually  
 31 explicit conduct involving a child, or use of a child or consent to the use  
 32 of a child in a sexual performance by producing, directing, or promoting a  
 33 sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-  
 34 402, and 5-27-403;  
 35           (10) Felony adult abuse, as prohibited in § 5-28-103;  
 36           (11) Arson, as prohibited in § 5-38-301;

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

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

5  
6 SECTION 2. Arkansas Code §§ 21-15-106 and 21-15-107 are amended to  
7 read as follows:

8 21-15-106. Rules and regulations - Records.

9 (a) All state agencies with a designated position or a designated  
10 financial or information technology position shall adopt the necessary rules  
11 and regulations to fully implement the provisions of this subchapter.

12 (b) Each state agency shall maintain on file, subject to inspection by  
13 the Arkansas Crime Information Center, the Identification Bureau of the  
14 Department of Arkansas State Police, or the Child Maltreatment Central  
15 Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident Maltreatment  
16 Central Registry, or the Certified Nursing Assistant/Employment Clearance  
17 Registry evidence that criminal history and central registry checks required  
18 by this subchapter have been initiated on all applicants and employees.

19  
20 21-15-107. Identification Bureau and registries - Duties.

21 (a)(1) After receipt of a request for a criminal history check, the  
22 ~~Identification Bureau of the Department of Arkansas State Police~~ agency or  
23 company conducting the criminal background check shall make reasonable  
24 efforts to respond to requests for state criminal history checks within  
25 twenty (20) calendar days and to respond to requests for national criminal  
26 history checks within ten (10) calendar days after the receipt of a national  
27 criminal history check from the Federal Bureau of Investigation.

28 (2) After receipt of a request for a central registry check, the  
29 registry shall make reasonable efforts to respond to requests within twenty  
30 (20) calendar days.

31 (b)(1) Upon completion of a criminal history check, the ~~Identification~~  
32 ~~Bureau of the Department of Arkansas State Police~~ agency or company  
33 conducting the criminal background check shall forward all information  
34 obtained concerning the applicant or employee to the Arkansas Crime  
35 Information Center.

36 (2) Upon completion of a central registry check, the registry

1 shall forward all information obtained concerning the applicant or employee  
2 to the requesting state agency.

3 (c) ~~The Identification Bureau of the Department of Arkansas State~~  
4 ~~Police agency or company conducting the criminal background check~~ shall  
5 maintain a database of the results of criminal history checks on each  
6 applicant for employment with and each employee of a state agency in a  
7 designated position.

8 (d)(1) ~~The Identification Bureau of the Department of Arkansas State~~  
9 ~~Police agency or company conducting the criminal background check~~ shall  
10 develop a form to be used for criminal history checks conducted under this  
11 subchapter. The form shall require the notarized signature of the person who  
12 is the subject of the check.

13 (2) The Child Maltreatment Central Registry, the Adult ~~Abuse and~~  
14 ~~Long-Term Care Facility Resident Maltreatment~~ Central Registry, and the  
15 Certified Nursing Assistant/Employment Clearance Registry shall work together  
16 to develop a form to be used for central registry checks conducted under this  
17 subchapter. The form shall require the notarized signature of the person who  
18 is the subject of the check.

19  
20 SECTION 3. Arkansas Code Title 21, Chapter 15, Subchapter 1, is  
21 amended to add the following new sections:

22 21-15-111. Hiring new employees into designated financial or  
23 information technology positions.

24 (a)(1)(A) When a person applies for employment with a state agency in  
25 a designated financial or information technology position and if the state  
26 agency intends to make an offer of employment to the applicant, the applicant  
27 shall complete a criminal history check form and shall submit the form to the  
28 state agency as part of the application process.

29 (B) Within five (5) days of the state agency's decision to  
30 make an offer of employment to the applicant, the state agency shall forward  
31 the criminal history check form to the agency or company conducting the  
32 criminal background check and request the agency or company to review the  
33 database of criminal history.

34 (C) Within three (3) days of the receipt of a request to  
35 review the database, the agency or company conducting the criminal background  
36 check shall notify the state agency if the database contains any criminal

1 history records on the applicant.

2 (2) If no criminal history records regarding the applicant are  
3 found in the database, then the state agency may make an offer of temporary  
4 employment to the applicant while the agency or company conducting the  
5 criminal background check completes a criminal history check and the state  
6 agency determines whether the applicant is disqualified from employment under  
7 subsection (f) of this section.

8 (3)(A) If a criminal history record regarding the applicant is  
9 found in the database, then the applicant is temporarily disqualified from  
10 employment until the state agency determines whether the applicant is  
11 disqualified from employment under subsection (f) of this section.

12 (B) If the state agency determines that the applicant is  
13 not disqualified, then the state agency may continue to temporarily employ  
14 the applicant while the agency or company completes a criminal history check.

15 (b)(1) Except as provided in subdivision (b)(2) of this section, the  
16 agency or company conducting the criminal background check shall conduct a  
17 state criminal history check and a national criminal history check on an  
18 applicant upon receiving a criminal history check request from a state  
19 agency.

20 (2) If the state agency can verify that the applicant has been  
21 employed by a state agency in a designated financial or information  
22 technology position within sixty (60) days before the application or has  
23 lived continuously in the State of Arkansas for the past five (5) years, the  
24 agency or company conducting the criminal background check shall conduct only  
25 a state criminal history check on the applicant.

26 (c)(1) Upon completion of a criminal history check on an applicant,  
27 the agency or company conducting the criminal background check shall issue a  
28 report to the state agency.

29 (2)(A) The state agency shall determine whether the applicant is  
30 disqualified from employment under subsection (f) of this section.

31 (B) If the state agency determines that an applicant is  
32 disqualified from employment, then the state agency shall deny employment to  
33 the applicant.

34 (d) If a national criminal history check is required under this  
35 section, the criminal history check shall conform to the applicable federal  
36 standards and shall include the taking of fingerprints.

1       (e) Before making a temporary or permanent offer of employment, a  
2 state agency shall inform applicants that:

3           (1) Continued employment is contingent upon the results of a  
4 criminal history check; and

5           (2) The applicant has the right to obtain a copy of his or her  
6 criminal history report from the agency or company conducting the criminal  
7 background check.

8       (f) No person shall be eligible for employment with a state agency in  
9 a designated financial or information technology position if that person has  
10 pleaded guilty or nolo contendere to, or has been found guilty of, any of the  
11 following offenses by any court in the State of Arkansas or of any similar  
12 offense by a court in another state or of any similar offense by a federal  
13 court regardless of any subsequent expungement of the conviction from the  
14 person's criminal record:

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

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

17           (3) Soliciting money or property from incompetents, as  
18 prohibited in § 5-27-229;

19           (4) Theft of property, as prohibited in § 5-36-103;

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

21           (6) Theft of property lost, mislaid, or delivered by mistake, as  
22 prohibited in § 5-36-105;

23           (7) Theft of leased, rented, or entrusted personal property, as  
24 prohibited in § 5-36-115;

25           (8) Shoplifting, as prohibited in § 5-36-116;

26           (9) Embezzlement by officer or employee of certain institutions,  
27 as prohibited in § 5-36-118;

28           (10) Theft of public benefits, as prohibited in § 5-36-202;

29           (11) Theft of wireless service, as prohibited in § 5-36-303;

30           (12) Facilitating theft of wireless service by manufacture,  
31 distribution, or possession of devices for theft of wireless services, as  
32 prohibited in § 5-36-304;

33           (13) Any offense involving theft detection devices, as  
34 prohibited in §§ 5-36-401 through 5-36-405;

35           (14) Forgery, as prohibited in § 5-37-201;

36           (15) Falsifying business records, as prohibited in § 5-37-202;



- 1           (16) Defrauding secured creditors, as prohibited in § 5-37-203;  
2           (17) Fraud in insolvency, as prohibited in § 5-37-204;  
3           (18) Issuing a false financial statement, as prohibited in § 5-  
4 37-205;  
5           (19) Receiving deposits in a failing financial institution, as  
6 prohibited in § 5-37-206;  
7           (20) Fraudulent use of a credit card or debit card, as  
8 prohibited in § 5-37-207;  
9           (21) Criminal impersonation, as prohibited in § 5-37-208;  
10          (22) Criminal possession of a forgery device, as prohibited in  
11 § 5-37-209;  
12          (23) Obtaining signature by deception, as prohibited in § 5-37-  
13 210;  
14          (24) Defrauding judgment creditors, as prohibited in § 5-37-211;  
15          (25) Unlawfully using slugs, as prohibited in § 5-37-212;  
16          (26) Criminal simulation, as prohibited in § 5-37-213;  
17          (27) Use of false transcript, diploma, or grade report from  
18 postsecondary educational institution, as prohibited in § 5-37-225;  
19          (28) Financial identify fraud, as prohibited in § 5-37-227;  
20          (29) Any offense violating The Arkansas Hot Check Law, as  
21 prohibited in §§ 5-37-301 through 5-37-307;  
22          (30) Theft of communication services, as prohibited in § 5-37-  
23 402;  
24          (31) Criminal mischief in the first degree, as prohibited in  
25 § 5-38-203;  
26          (32) Residential or commercial burglary, as prohibited in § 5-  
27 39-201;  
28          (33) Breaking or entering, as prohibited in § 5-39-202;  
29          (34) Computer fraud, as prohibited in § 5-41-103;  
30          (35) Computer trespass, as prohibited in § 5-41-104;  
31          (36) Any offense involving computer crime, as prohibited in  
32 §§ 5-41-201 through 5-41-206;  
33          (37) Criminal use of property or laundering criminal proceeds,  
34 as prohibited in § 5-42-204;  
35          (38) Any offense involving corruption in public office, as  
36 prohibited in §§ 5-52-101 through 5-52-108;

1           (39) Tampering with a public record, as prohibited in § 5-54-  
2 121;

3           (40) Criminal acts constituting Medicaid fraud, as prohibited in  
4 § 5-55-111;

5           (41) Any offense involving illegal food coupons, as prohibited  
6 in §§ 5-55-201 through 5-55-205;

7           (42) Engaging in a continuing criminal gang, organization, or  
8 enterprise, as prohibited in § 5-74-104; and

9           (43) Criminal attempt, criminal complicity, criminal  
10 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,  
11 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
12 subsection (f).

13  
14           21-15-112. Incumbent employees in designated financial or information  
15 technology positions.

16           (a)(1) State agencies shall ensure that all employees in designated  
17 financial or information technology positions apply for criminal history  
18 checks by December 1, 2005.

19           (2) Incumbent employees in designated financial or information  
20 technology positions shall have a subsequent criminal background check within  
21 five (5) years of the initial criminal background check and every five (5)  
22 years thereafter.

23           (3)(A) In accordance with subdivisions (a)(1) and (a)(2) of this  
24 section, each employee of a state agency in a designated financial or  
25 information technology position shall complete a criminal history check form  
26 and shall submit the form to the state agency.

27           (B) The state agency shall:

28                   (i) Forward the criminal history check form to the  
29 agency or company conducting the criminal background check; and

30                   (ii) Pay any fee associated with the criminal  
31 history check on behalf of the employee.

32           (b)(1) Except as provided in subdivision (b)(2) of this section, the  
33 agency or company conducting the criminal background check shall conduct a  
34 state criminal history check and a national criminal history check on an  
35 employee upon receiving a criminal history check request from a state agency.

36           (2) If the state agency can verify that the employee has been

1 employed by a state agency in a designated financial or information  
2 technology position within sixty (60) days before applying for the criminal  
3 background check or has lived continuously in the State of Arkansas for the  
4 previous five (5) years, the agency or company shall conduct only a state  
5 criminal history check on the applicant.

6 (c)(1) Upon completion of a criminal history check on an employee, the  
7 agency or company conducting the criminal background check shall issue a  
8 report to the state agency.

9 (2)(A) The state agency shall determine whether the employee is  
10 disqualified from employment under subsection (f) of this section.

11 (B) If the state agency determines that an employee is  
12 disqualified from employment, then the state agency shall discharge the  
13 employee.

14 (d) If a national criminal history check is required under this  
15 section, the criminal history check shall conform to the applicable federal  
16 standards and shall include the taking of fingerprints.

17 (e) A state agency shall inform all employees in designated financial  
18 or information technology positions that:

19 (1) Continued employment is contingent upon the results of a  
20 criminal history check; and

21 (2) The employee has the right to obtain a copy of his or her  
22 criminal history report from the agency or company conducting the criminal  
23 background check.

24 (f) A state agency shall discharge from employment in a designated  
25 financial or information technology position an employee who has pleaded  
26 guilty or nolo contendere to, or has been found guilty of, any of the  
27 following offenses by any court in the State of Arkansas or of any similar  
28 offense by a court in another state or of any similar offense by a federal  
29 court regardless of any subsequent expungement of the conviction from the  
30 person's criminal record:

31 (1) Robbery, as prohibited in § 5-12-102;

32 (2) Aggravated robbery, as prohibited in § 5-12-103;

33 (3) Soliciting money or property from incompetents, as  
34 prohibited in § 5-27-229;

35 (4) Theft of property, as prohibited in § 5-36-103;

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

1           (6) Theft of property lost, mislaid, or delivered by mistake, as  
2 prohibited in § 5-36-105;

3           (7) Theft of leased, rented, or entrusted personal property, as  
4 prohibited in § 5-36-115;

5           (8) Shoplifting, as prohibited in § 5-36-116;

6           (9) Embezzlement by officer or employee or certain institutions,  
7 as prohibited in § 5-36-118;

8           (10) Theft of public benefits, as prohibited in § 5-36-202;

9           (11) Theft of wireless service, as prohibited in § 5-36-303;

10          (12) Facilitating theft of wireless service by manufacture,  
11 distribution, or possession of devices for theft of wireless services, as  
12 prohibited in § 5-36-304;

13          (13) Any offense involving theft detection devices, as  
14 prohibited in §§ 5-36-401 through 5-36-405;

15          (14) Forgery, as prohibited in § 5-37-201;

16          (15) Falsifying business records, as prohibited in § 5-37-202;

17          (16) Defrauding secured creditors, as prohibited in § 5-37-203;

18          (17) Fraud in insolvency, as prohibited in § 5-37-204;

19          (18) Issuing a false financial statement, as prohibited in § 5-  
20 37-205;

21          (19) Receiving deposits in a failing financial institution, as  
22 prohibited in § 5-37-206;

23          (20) Fraudulent use of a credit card or debit card, as  
24 prohibited in § 5-37-207;

25          (21) Criminal impersonation, as prohibited in § 5-37-208;

26          (22) Criminal possession of a forgery device, as prohibited in  
27 § 5-37-209;

28          (23) Obtaining signature by deception, as prohibited in § 5-37-  
29 210;

30          (24) Defrauding judgment creditors, as prohibited in § 5-37-211;

31          (25) Unlawfully using slugs, as prohibited in § 5-37-212;

32          (26) Criminal simulation, as prohibited in § 5-37-213;

33          (27) Use of false transcript, diploma, or grade report from  
34 postsecondary educational institution, as prohibited in § 5-37-225;

35          (28) Financial identify fraud, as prohibited in § 5-37-227;

36          (29) Any offense violating The Arkansas Hot Check Law, as

1 prohibited in §§ 5-37-301 through 5-37-307;

2 (30) Theft of communication services, as prohibited in § 5-37-  
3 402;

4 (31) Criminal mischief in the first degree, as prohibited in  
5 § 5-38-203;

6 (32) Residential or commercial burglary, as prohibited in § 5-  
7 39-201;

8 (33) Breaking or entering, as prohibited in § 5-39-202;

9 (34) Computer fraud, as prohibited in § 5-41-103;

10 (35) Computer trespass, as prohibited in § 5-41-104;

11 (36) Any offense involving computer crime, as prohibited in  
12 §§ 5-41-201 through 5-41-206;

13 (37) Criminal use of property or laundering criminal proceeds,  
14 as prohibited in § 5-42-204;

15 (38) Any offense involving corruption in public office, as  
16 prohibited in §§ 5-52-101 through 5-52-108;

17 (39) Tampering with a public record, as prohibited in § 5-54-  
18 121;

19 (40) Criminal acts constituting Medicaid fraud, as prohibited in  
20 § 5-55-111;

21 (41) Any offense involving illegal food coupons, as prohibited  
22 in §§ 5-55-201 through 5-55-205;

23 (42) Engaging in a continuing criminal gang, organization, or  
24 enterprise, as prohibited in § 5-74-104; and

25 (43) Criminal attempt, criminal complicity, criminal  
26 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,  
27 5-3-301, and 5-3-401, to commit any of the offenses listed in this  
28 subsection (f).

29  
30 21-15-113. Waiver of exclusion or discharge requirement for persons in  
31 designated financial or information technology positions.

32 (a)(1) The provisions of §§ 21-15-111 and 21-15-112 prohibiting the  
33 hiring of a person or requiring the discharge of a person in a designated  
34 financial or information technology position may be waived by the director of  
35 a state agency upon the request of:

36 (A) A supervisor or other managerial employee in the state

1 agency;

2 (B) An affected applicant for employment; or

3 (C) The person in the designated financial or information  
4 technology position who is subject to discharge.

5 (2) Application for a waiver must be made within five (5) days  
6 of the receipt of the criminal background check.

7 (3) If the crime is a misdemeanor and more than five (5) years  
8 have lapsed since the conviction, the agency is not required to discharge an  
9 incumbent employee if a request for a waiver is timely made and if the waiver  
10 is ultimately granted.

11 (4) If the waiver is not granted and the waiver applicant is an  
12 incumbent employee who was not immediately discharged, the agency shall  
13 immediately discharge the employee.

14 (5) If the waiver is not granted and the waiver applicant is an  
15 applicant for employment, the agency is prohibited from hiring the applicant  
16 in a designated financial or information technology position.

17 (6) If an incumbent employee was immediately discharged but was  
18 subsequently granted a waiver, the employee shall be immediately reinstated  
19 but shall not be entitled to retroactive relief, including back pay.

20 (b)(1) A waiver may be granted upon a preponderance of the evidence  
21 that the person is rehabilitated such that the public interest is not  
22 threatened by the person's employment.

23 (2) Evidence of rehabilitation may include:

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

25 (B) The circumstances surrounding the crime or act;

26 (C) The length of time since the crime or act;

27 (D) Subsequent work history;

28 (E) Employment references;

29 (F) Character references; and

30 (G) Other evidence demonstrating the rehabilitation of the  
31 applicant or employee.

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