

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: S2/23/05

A Bill

SENATE BILL 401

5 By: Senator Faris
6
7

For An Act To Be Entitled

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

Subtitle

12 AN ACT TO AMEND THE CRIMINAL BACKGROUND
13 CHECK ACT.
14
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 and request*
32 *the bureau to review the bureau's database of criminal history ~~checks on~~*
33 *~~state agency employees in designated positions.~~*

34 (b) Within three (3) days of the receipt of a
35 *request to review the database, the bureau* shall notify the state agency if
36 the database contains any criminal history records on the applicant; and

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

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

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

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

16 (3)(A) If a criminal history record regarding the applicant is
17 *found in the bureau's database, then the applicant is* temporarily
18 disqualified from employment until the state agency determines whether the
19 applicant is disqualified from employment under subsection (f) of this
20 section.

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

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

29 (b)(1) Except as provided in subdivision (b)(2) of this section, the
30 *bureau* shall conduct a state criminal history check and a national criminal
31 history check on an applicant upon receiving a criminal history check request
32 from a state agency.

33 (2) If the state agency can verify that the applicant has been
34 employed by a state agency in a designated position within sixty (60) days
35 before the application or has lived continuously in the State of Arkansas for
36 *the past five (5) years, the bureau* shall conduct only a state criminal

1 history check on the applicant.

2 (c)(1) Upon completion of a criminal history check on an applicant,
3 *the bureau* shall issue a report to the state agency.

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

6 (B) If the state agency determines that an applicant is
7 disqualified from employment, then the state agency shall deny employment to
8 the applicant.

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

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

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

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

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

18 (B) Central registry report from the registries.

19 (f) No person shall be eligible for employment with a state agency in
20 a designated position if that person has pleaded guilty or nolo contendere
21 to, or been found guilty of, any of the following offenses by any court in
22 the State of Arkansas or of any similar offense by a court in another state
23 or of any similar offense by a federal court regardless of any subsequent
24 expungement of the 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, 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 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 - 5-27-305, 5-
- 26 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 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for
11 persons in designated positions.

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

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

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

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

1 The state agency shall forward:

2 (A)(i) The criminal history check form to the
3 *Identification Bureau of the Department of Arkansas State Police.*

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

6 (B)(i) The central registry check to the Child
7 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility
8 Resident Maltreatment Central Registry, and the Certified Nurses Assistants
9 Central Registry to review the databases.

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

12 (b)(1) Except as provided in subdivision (b)(2) of this section, the
13 *bureau shall* conduct a state criminal history check and a national criminal
14 history check on an applicant upon receiving a criminal history check request
15 from a state agency.

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

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

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

25 (B) If the state agency determines that an employee is
26 disqualified from employment, then the state agency shall discharge the
27 employee.

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

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

1 (f) A state agency shall inform all employees in designated positions
2 that:

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

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

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

7 (B) Central registry report from the registries.

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

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

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

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

22 (6) False imprisonment in the first degree, as prohibited in
23 § 5-11-103;

24 (7) Permanent detention or restraint, as prohibited in § 5-11-
25 106;

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

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

28 (10) Battery in the first degree, as prohibited in § 5-13-201;

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

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

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

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

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

36 (16) Sexual assault in the first degree, second degree, third

1 degree, or fourth degree as prohibited in §§ 5-14-124 - 5-14-127;

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

3 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
4 5-26-306;

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

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

9 (21) Permitting abuse of a child, as prohibited in § 5-27-
10 221(a)(1) and (3);

11 (22) Engaging children in sexually explicit conduct for use in
12 visual or print medium, transportation of minors for prohibited sexual
13 conduct, pandering or possessing visual or print medium depicting sexually
14 explicit conduct involving a child, or the use of a child or consent to the
15 use of a child in a sexual performance by producing, directing, or promoting
16 a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-
17 27-305, 5-27-402, and 5-27-403;

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

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

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

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

22 (27) Burglary, as prohibited in § 5-39-201;

23 (28) Felony violation of the Uniform Controlled Substances Act,
24 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

28 (31) Criminal attempt, criminal complicity, criminal
29 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
30 5-3-301, and 5-3-401, to commit any of the offenses listed in this
31 subsection;

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

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

36

1 21-15-104. Waiver of exclusion or discharge requirement for persons in
2 designated positions.

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

6 ~~(1)~~(A) A supervisor or other managerial employee in the
7 state agency;

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

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

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

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

17 (4) If the waiver is not granted and the waiver applicant is an
18 incumbent employee who was not immediately discharged, the agency shall
19 immediately discharge the employee.

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

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

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

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

31 ~~(1)~~(A) The age at which the crime or act was committed;

32 ~~(2)~~(B) The circumstances surrounding the crime or act;

33 ~~(3)~~(C) The length of time since the crime or act;

34 ~~(4)~~(D) Subsequent work history;

35 ~~(5)~~(E) Employment references;

36 ~~(6)~~(F) Character references; and

1 ~~(7)~~(G) Other evidence demonstrating that the applicant or
2 employee does not pose a threat to the health or safety of children or other
3 clients of the state agency.

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

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

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

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

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

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

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

15 (7) Endangering the welfare of an incompetent person in the
16 first degree, as prohibited in § 5-27-201;

17 (8) Endangering the welfare of a minor in the first degree, as
18 prohibited in § 5-27-203;

19 (9) Engaging children in sexually explicit conduct for use in
20 visual or print media, transportation of minors for prohibited sexual
21 conduct, pandering or possessing visual or print medium depicting sexually
22 explicit conduct involving a child, or use of a child or consent to the use
23 of a child in a sexual performance by producing, directing, or promoting a
24 sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-
25 402, and 5-27-403;

26 (10) Felony adult abuse, as prohibited in § 5-28-103;

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

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

29 and

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

32
33 SECTION 2. Arkansas Code §§ 21-15-106 and 21-15-107 are amended to
34 read as follows:

35 21-15-106. Rules and regulations - Records.

36 (a) All state agencies with a designated position or a designated

1 financial or information technology position shall adopt the necessary rules
2 and regulations to fully implement the provisions of this subchapter.

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

10
11 21-15-107. Identification Bureau and registries - Duties.

12 (a)(1) After receipt of a request for a criminal history check, the
13 *Identification Bureau of the Department of Arkansas State Police shall make*
14 *reasonable* efforts to respond to requests for state criminal history checks
15 within twenty (20) calendar days and to respond to requests for national
16 criminal history checks within ten (10) calendar days after the receipt of a
17 national criminal history check from the Federal Bureau of Investigation.

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

21 (b)(1) *Upon completion of a criminal history check, the Identification*
22 *Bureau of the Department of Arkansas State Police shall forward all*
23 *information* obtained concerning the applicant or employee to the Arkansas
24 Crime Information Center.

25 (2) Upon completion of a central registry check, the registry
26 shall forward all information obtained concerning the applicant or employee
27 to the requesting state agency.

28 (c) *The Identification Bureau of the Department of Arkansas State*
29 *Police shall* maintain a database of the results of criminal history checks on
30 each applicant for employment with and each employee of a state agency in a
31 designated position.

32 (d)(1) *The Identification Bureau of the Department of Arkansas State*
33 *Police shall* develop a form to be used for criminal history checks conducted
34 under this subchapter. The form shall require the notarized signature of the
35 person who is the subject of the check.

36 (2) The Child Maltreatment Central Registry, the Adult ~~Abuse~~ and

1 Long-Term Care Facility Resident Maltreatment Central Registry, and the
2 Certified Nursing Assistant/Employment Clearance Registry shall work together
3 to develop a form to be used for central registry checks conducted under this
4 subchapter. The form shall require the notarized signature of the person who
5 is the subject of the check.

6
7 SECTION 3. Arkansas Code Title 21, Chapter 15, Subchapter 1, is
8 amended to add the following new sections:

9 21-15-111. Hiring new employees into designated financial or
10 information technology positions.

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

16 (B) Within five (5) days of the state agency's decision to
17 make an offer of employment to the applicant, the state agency shall forward
18 the criminal history check form to the Identification Bureau of the
19 Department of Arkansas State Police and request the bureau to review the
20 database of criminal history.

21 (C) Within three (3) days of the receipt of a request to
22 review the database, the bureau shall notify the state agency if the database
23 contains any criminal history records on the applicant.

24 (2) If no criminal history records regarding the applicant are
25 found in the database, then the state agency may make an offer of temporary
26 employment to the applicant while the bureau completes a criminal history
27 check and the state agency determines whether the applicant is disqualified
28 from employment under subsection (f) of this section.

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

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

36 (b)(1) Except as provided in subdivision (b)(2) of this section, the

1 bureau shall conduct a state criminal history check and a national criminal
2 history check on an applicant upon receiving a criminal history check request
3 from a state agency.

4 (2) If the state agency can verify that the applicant has been
5 employed by a state agency in a designated financial or information
6 technology position within sixty (60) days before the application or has
7 lived continuously in the State of Arkansas for the past five (5) years, the
8 bureau shall conduct only a state criminal history check on the applicant.

9 (c)(1) Upon completion of a criminal history check on an applicant,
10 the bureau shall issue a report to the state agency.

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

13 (B) If the state agency determines that an applicant is
14 disqualified from employment, then the state agency shall deny employment to
15 the applicant.

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

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

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

23 (2) The applicant has the right to obtain a copy of his or her
24 criminal history report from the bureau.

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

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

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

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

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

- 1 (5) Theft by receiving, as prohibited in § 5-36-106;
- 2 (6) Theft of property lost, mislaid, or delivered by mistake, as
3 prohibited in § 5-36-105;
- 4 (7) Theft of leased, rented, or entrusted personal property, as
5 prohibited in § 5-36-115;
- 6 (8) Shoplifting, as prohibited in § 5-36-116;
- 7 (9) Embezzlement by officer or employee of certain institutions,
8 as prohibited in § 5-36-118;
- 9 (10) Theft of public benefits, as prohibited in § 5-36-202;
- 10 (11) Theft of wireless service, as prohibited in § 5-36-303;
- 11 (12) Facilitating theft of wireless service by manufacture,
12 distribution, or possession of devices for theft of wireless services, as
13 prohibited in § 5-36-304;
- 14 (13) Any offense involving theft detection devices, as
15 prohibited in §§ 5-36-401 through 5-36-405;
- 16 (14) Forgery, as prohibited in § 5-37-201;
- 17 (15) Falsifying business records, as prohibited in § 5-37-202;
- 18 (16) Defrauding secured creditors, as prohibited in § 5-37-203;
- 19 (17) Fraud in insolvency, as prohibited in § 5-37-204;
- 20 (18) Issuing a false financial statement, as prohibited in § 5-
21 37-205;
- 22 (19) Receiving deposits in a failing financial institution, as
23 prohibited in § 5-37-206;
- 24 (20) Fraudulent use of a credit card or debit card, as
25 prohibited in § 5-37-207;
- 26 (21) Criminal impersonation, as prohibited in § 5-37-208;
- 27 (22) Criminal possession of a forgery device, as prohibited in
28 § 5-37-209;
- 29 (23) Obtaining signature by deception, as prohibited in § 5-37-
30 210;
- 31 (24) Defrauding judgment creditors, as prohibited in § 5-37-211;
- 32 (25) Unlawfully using slugs, as prohibited in § 5-37-212;
- 33 (26) Criminal simulation, as prohibited in § 5-37-213;
- 34 (27) Use of false transcript, diploma, or grade report from
35 postsecondary educational institution, as prohibited in § 5-37-225;
- 36 (28) Financial identify fraud, as prohibited in § 5-37-227;

1 (29) Any offense violating The Arkansas Hot Check Law, as
2 prohibited in §§ 5-37-301 through 5-37-307;

3 (30) Theft of communication services, as prohibited in § 5-37-
4 402;

5 (31) Criminal mischief in the first degree, as prohibited in
6 § 5-38-203;

7 (32) Residential or commercial burglary, as prohibited in § 5-
8 39-201;

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

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

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

12 (36) Any offense involving computer crime, as prohibited in
13 §§ 5-41-201 through 5-41-206;

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

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

18 (39) Tampering with a public record, as prohibited in § 5-54-
19 121;

20 (40) Criminal acts constituting Medicaid fraud, as prohibited in
21 § 5-55-111;

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

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

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

30
31 21-15-112. Incumbent employees in designated financial or information
32 technology positions.

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

36 (2) Incumbent employees in designated financial or information

1 technology positions shall have a subsequent criminal background check within
2 five (5) years of the initial criminal background check and every five (5)
3 years thereafter.

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

8 (B) The state agency shall:

9 (i) Forward the criminal history check form to the
10 Identification Bureau of the Department of Arkansas State Police; and

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

13 (b)(1) Except as provided in subdivision (b)(2) of this section, the
14 bureau shall conduct a state criminal history check and a national criminal
15 history check on an employee upon receiving a criminal history check request
16 from a state agency.

17 (2) If the state agency can verify that the employee has been
18 employed by a state agency in a designated financial or information
19 technology position within sixty (60) days before applying for the criminal
20 background check or has lived continuously in the State of Arkansas for the
21 previous five (5) years, the bureau shall conduct only a state criminal
22 history check on the applicant.

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

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

27 (B) If the state agency determines that an employee is
28 disqualified from employment, then the state agency shall discharge the
29 employee.

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

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

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

1 (2) The employee has the right to obtain a copy of his or her
2 criminal history report from the bureau.

3 (f) A state agency shall discharge from employment in a designated
4 financial or information technology position an employee who has pleaded
5 guilty or nolo contendere to, or has been found guilty of, any of the
6 following offenses by any court in the State of Arkansas or of any similar
7 offense by a court in another state or of any similar offense by a federal
8 court regardless of any subsequent expungement of the conviction from the
9 person's criminal record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (18) Issuing a false financial statement, as prohibited in § 5-
35 37-205;

36 (19) Receiving deposits in a failing financial institution, as

- 1 prohibited in § 5-37-206;
2 (20) Fraudulent use of a credit card or debit card, as
3 prohibited in § 5-37-207;
4 (21) Criminal impersonation, as prohibited in § 5-37-208;
5 (22) Criminal possession of a forgery device, as prohibited in
6 § 5-37-209;
7 (23) Obtaining signature by deception, as prohibited in § 5-37-
8 210;
9 (24) Defrauding judgment creditors, as prohibited in § 5-37-211;
10 (25) Unlawfully using slugs, as prohibited in § 5-37-212;
11 (26) Criminal simulation, as prohibited in § 5-37-213;
12 (27) Use of false transcript, diploma, or grade report from
13 postsecondary educational institution, as prohibited in § 5-37-225;
14 (28) Financial identify fraud, as prohibited in § 5-37-227;
15 (29) Any offense violating The Arkansas Hot Check Law, as
16 prohibited in §§ 5-37-301 through 5-37-307;
17 (30) Theft of communication services, as prohibited in § 5-37-
18 402;
19 (31) Criminal mischief in the first degree, as prohibited in
20 § 5-38-203;
21 (32) Residential or commercial burglary, as prohibited in § 5-
22 39-201;
23 (33) Breaking or entering, as prohibited in § 5-39-202;
24 (34) Computer fraud, as prohibited in § 5-41-103;
25 (35) Computer trespass, as prohibited in § 5-41-104;
26 (36) Any offense involving computer crime, as prohibited in
27 §§ 5-41-201 through 5-41-206;
28 (37) Criminal use of property or laundering criminal proceeds,
29 as prohibited in § 5-42-204;
30 (38) Any offense involving corruption in public office, as
31 prohibited in §§ 5-52-101 through 5-52-108;
32 (39) Tampering with a public record, as prohibited in § 5-54-
33 121;
34 (40) Criminal acts constituting Medicaid fraud, as prohibited in
35 § 5-55-111;
36 (41) Any offense involving illegal food coupons, as prohibited

1 in §§ 5-55-201 through 5-55-205;

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

4 (43) 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 (f).

8
9 21-15-113. Waiver of exclusion or discharge requirement for persons in
10 designated financial or information technology positions.

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

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

17 (B) An affected applicant for employment; or

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

20 (2) Application for a waiver must be made within five (5) days
21 of the 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 in a designated financial or information technology position.

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

35 (b)(1) A waiver may be granted upon a preponderance of the evidence
36 that the person is rehabilitated such that the public interest is not

1 threatened by the person's employment.

2 (2) Evidence of rehabilitation may include:

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

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

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

6 (D) Subsequent work history;

7 (E) Employment references;

8 (F) Character references; and

9 (G) Other evidence demonstrating the rehabilitation of the
10 applicant or employee.

11
12 */s/ Faris*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36