

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 S3/1/05

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



1 (ii) An expunged conviction shall be included in a
2 criminal history report only if the plea or trial occurred after the
3 effective date of this subdivision (4).

4 (B) "Criminal history check" does not include:

5 (i) A conviction reversed by an appellate court;

6 (ii) A conviction vacated by a trial or appellate
7 court pursuant to post-conviction procedures or a petition for writ of habeas
8 corpus;

9 (iii) A conviction for which a person has been
10 pardoned;

11 (iv) A prosecution terminated by an acquittal,
12 dismissal, or nolle prosequi; or

13 (v) An arrest that does not result in a conviction;

14 ~~(4)~~(5) "Designated position" means a position in which a person
15 is employed by a state agency to provide care, supervision, treatment, or any
16 other services to the elderly, to mentally ill or developmentally disabled
17 persons, to individuals with mental illnesses, or to children who reside in
18 any state-operated facility or a position in which the applicant or employee
19 will have direct contact with a child;

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

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

26 (B) Approves security access to information systems;

27 (C) Authenticates and configures user security access to
28 information systems;

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

31 (E) Manages or directs information technology network,
32 application, or system administrators; or

33 (F) Develops, designs, programs, or maintains information
34 technology networks, applications, or systems;

35 ~~(5)~~(7) "Developmentally disabled person" means a person with a
36 disability that is attributable to:

1 (A) Mental retardation, cerebral palsy, epilepsy, or
2 autism;

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

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

10 ~~(6)~~(8) "Direct contact" means the ability to interview,
11 question, examine, interact with, talk with, or communicate with a child
12 without being in the physical presence of a person other than the child;

13 ~~(7)~~(9) "Elderly" means persons age sixty-five (65) or older;

14 ~~(8)~~(10)(A) "Mentally ill persons" means those who suffer from a
15 substantial impairment of emotional processes, or of the ability to exercise
16 conscious control of their actions, or of the ability to perceive reality or
17 to reason when the impairment is manifested in instances of extremely
18 abnormal behavior or extremely faulty perceptions.

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

23 ~~(9)~~(11)(A) "State agency" means any agency, authority, board,
24 bureau, commission, council, department, office, or officer of the state
25 receiving an appropriation by the General Assembly.

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

29
30 21-15-102. Positions involving direct contact with children and with
31 mentally ill and developmentally disabled persons.

32 (a)(1)(A) When a person applies for employment with a state agency in
33 a designated position and if the state agency intends to make an offer of
34 employment to the applicant, the applicant shall complete a criminal history
35 check form and a central registry check form obtained from the state agency
36 and shall submit the form to the state agency as part of the application

1 process.

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

5 (i)(a) The criminal history check form to the
6 *Identification Bureau of the Department of Arkansas State Police and request*
7 *the bureau to review the bureau's database of criminal history ~~checks on~~*
8 *~~state agency employees in designated positions.~~*

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

12 (ii)(a) The central registry check form to the Child
13 Maltreatment Central Registry, the Adult Abuse and Long-Term Care Facility
14 Resident Maltreatment Central Registry, and the Certified Nursing
15 Assistant/Employment Clearance Registry for a central registry check.

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

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

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

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

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

35 (4) If an applicant has been named as an offender or perpetrator
36 in a true, substantiated, or founded report from the Child Maltreatment

1 Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident
2 Maltreatment Central Registry, or the Certified Nursing Assistant/Employment
3 Clearance Registry, the applicant shall be immediately disqualified.

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

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

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

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

17 (B) If the state agency determines that an applicant is
18 disqualified from employment, then the state agency shall deny employment to
19 the applicant.

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

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

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

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

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

29 (B) Central registry report from the registries.

30 (f) No person shall be eligible for employment with a state agency in
31 a designated position if that person has pleaded guilty or nolo contendere
32 to, or been found guilty of, any of the following offenses by any court in
33 the State of Arkansas or of any similar offense by a court in another state
34 or of any similar offense by a federal court regardless of any subsequent
35 expungement of the conviction from the person's criminal record, but not
36 including matters excluded from a criminal history check under § 21-15-

1 101(4)(B):

- 2 (1) Capital murder, as prohibited in § 5-10-101;
- 3 (2) Murder in the first degree and second degree, as prohibited
4 in §§ 5-10-102 and 5-10-103;
- 5 (3) Manslaughter, as prohibited in § 5-10-104;
- 6 (4) Negligent homicide, as prohibited in § 5-10-105;
- 7 (5) Kidnapping, as prohibited in § 5-11-102;
- 8 (6) False imprisonment in the first degree, as prohibited in §
9 5-11-103;
- 10 (7) Permanent detention or restraint, as prohibited in § 5-11-
11 106;
- 12 (8) Robbery, as prohibited in § 5-12-102;
- 13 (9) Aggravated robbery, as prohibited in § 5-12-103;
- 14 (10) Battery in the first degree, as prohibited in § 5-13-201;
- 15 (11) Aggravated assault, as prohibited in § 5-13-204;
- 16 (12) Introduction of controlled substance into body of another
17 person, as prohibited in § 5-13-210;
- 18 (13) Terroristic threatening in the first degree, as prohibited
19 in § 5-13-301;
- 20 (14) Rape, as prohibited in § 5-14-103;
- 21 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 22 (16) Sexual assault in the first degree, second degree, third
23 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 24 (17) Incest, as prohibited in § 5-26-202;
- 25 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
26 5-26-306;
- 27 (19) Endangering the welfare of an incompetent person in the
28 first degree, as prohibited in § 5-27-201;
- 29 (20) Endangering the welfare of a minor in the first degree, as
30 prohibited in § 5-27-203;
- 31 (21) Permitting abuse of a child, as prohibited in § 5-27-
32 221(a)(1) and (3);
- 33 (22) Engaging children in sexually explicit conduct for use in
34 visual or print medium, transportation of minors for prohibited sexual
35 conduct, pandering or possessing visual or print medium depicting sexually
36 explicit conduct involving a child, or the use of a child or consent to the

1 use of a child in a sexual performance by producing, directing, or promoting
2 a sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-
3 27-402, and 5-27-403;

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

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

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

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

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

9 (28) Felony violation of the Uniform Controlled Substances Act,
10 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

14 (31) Criminal attempt, criminal complicity, criminal
15 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
16 5-3-301, and 5-3-401, to commit any of the offenses listed in this
17 subsection;

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

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

22
23 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for
24 persons in designated positions.

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

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

36 (2) State agencies shall ensure that all employees in designated

1 positions will have applied for central registry checks by October 1, 2002,
2 and shall adopt a rule that prescribes how central registry checks on
3 incumbent employees will be phased in over the period of time prior to
4 July 1, 2002. ~~The rule shall require incumbent employees to apply for~~
5 ~~central registry checks in conjunction with the employee's anniversary of~~
6 ~~employment or any time before that date.~~ An incumbent employee in a
7 designated position shall have subsequent central registry checks completed
8 within five (5) years of the initial central registry check and every five
9 (5) years thereafter.

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

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

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

19 (B)(i) The central registry check to the Child
20 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility
21 Resident Maltreatment Central Registry, and the Certified Nurses Assistants
22 Central Registry to review the databases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (g) A state agency shall discharge from employment in a designated
22 position any person who has pleaded guilty or nolo contendere to, or been
23 found guilty of, any of the following offenses by any court in the State of
24 Arkansas or of any similar offense by a court in another state or of any
25 similar offense by a federal court, ~~but only after an opportunity for a~~
26 ~~hearing conducted in accordance with the Arkansas Administrative Procedure~~
27 ~~Act, § 25-15-201 et seq.,~~ regardless of any subsequent expungement of the
28 conviction from the person's criminal record, but not including matters
29 excluded from a criminal history check under § 21-15-101(4)(B):

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

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

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

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

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

36 (6) False imprisonment in the first degree, as prohibited in

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

1 (28) Felony violation of the Uniform Controlled Substances Act,
2 §§ 5-64-101 – 5-64-608, as prohibited in § 5-64-401;

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

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

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

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

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

14
15 21-15-104. Waiver of exclusion or discharge requirement for persons in
16 designated positions.

17 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-
18 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a
19 state agency upon the request of:

20 ~~(1)~~(A) A supervisor or other managerial employee in the
21 state agency;

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

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

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

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

31 (4) If the waiver is not granted and the waiver applicant is an
32 incumbent employee who was not immediately discharged, the agency shall
33 immediately discharge the employee.

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

36 (6) If an incumbent employee was immediately discharged but was

1 subsequently granted a waiver, the employee shall be immediately reinstated
2 but shall not be entitled to retroactive relief, including back pay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (9) Engaging children in sexually explicit conduct for use in
34 visual or print media, transportation of minors for prohibited sexual
35 conduct, pandering or possessing visual or print medium depicting sexually
36 explicit conduct involving a child, or use of a child or consent to the use

1 of a child in a sexual performance by producing, directing, or promoting a
2 sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-
3 402, and 5-27-403;

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

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

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

7 and

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

10
11 SECTION 2. Arkansas Code §§ 21-15-106 and 21-15-107 are amended to
12 read as follows:

13 21-15-106. Rules and regulations - Records.

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

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

24
25 21-15-107. Identification Bureau and registries - Duties.

26 (a)(1) After receipt of a request for a criminal history check, the
27 *Identification Bureau of the Department of Arkansas State Police shall make*
28 *reasonable* efforts to respond to requests for state criminal history checks
29 within twenty (20) calendar days and to respond to requests for national
30 criminal history checks within ten (10) calendar days after the receipt of a
31 national criminal history check from the Federal Bureau of Investigation.

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

35 (b)(1) *Upon completion of a criminal history check, the Identification*
36 *Bureau of the Department of Arkansas State Police shall forward all*

1 information obtained concerning the applicant or employee to the Arkansas
2 Crime Information Center.

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

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

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

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

20

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

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

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

30 (B) Within five (5) days of the state agency's decision to
31 make an offer of employment to the applicant, the state agency shall forward
32 the criminal history check form to the Identification Bureau of the
33 Department of Arkansas State Police and request the bureau to review the
34 database of criminal history.

35 (C) Within three (3) days of the receipt of a request to
36 review the database, the bureau shall notify the state agency if the database

1 contains any criminal 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 bureau completes a criminal history
5 check and the state agency determines whether the applicant is disqualified
6 from employment under subsection (f) of this section.

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

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

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

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

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

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

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

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) Before making a temporary or permanent offer of employment, a
34 state agency shall inform applicants that:

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

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

3 (f) No person shall be eligible for employment with a state agency in
4 a designated financial or information technology position if that person has
5 pleaded 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, but not including matters excluded from a criminal
10 history check under § 21-15-101(4)(B):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (18) Issuing a false financial statement, as prohibited in § 5-
36 37-205;

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

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

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

6 (22) Criminal possession of a forgery device, as prohibited in
7 § 5-37-209;

8 (23) Obtaining signature by deception, as prohibited in § 5-37-
9 210;

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

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

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

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

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

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

18 (30) Theft of communication services, as prohibited in § 5-37-
19 402;

20 (31) Criminal mischief in the first degree, as prohibited in
21 § 5-38-203;

22 (32) Residential or commercial burglary, as prohibited in § 5-
23 39-201;

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

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

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

27 (36) Any offense involving computer crime, as prohibited in
28 §§ 5-41-201 through 5-41-206;

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

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

33 (39) Tampering with a public record, as prohibited in § 5-54-
34 121;

35 (40) Criminal acts constituting Medicaid fraud, as prohibited in
36 § 5-55-111;

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

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

5 (43) 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 (f).

9
10 21-15-112. Incumbent employees in designated financial or information
11 technology positions.

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

15 (2) Incumbent employees in designated financial or information
16 technology positions shall have a subsequent criminal background check within
17 five (5) years of the initial criminal background check and every five (5)
18 years thereafter.

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

23 (B) The state agency shall:

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

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

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

32 (2) If the state agency can verify that the employee has been
33 employed by a state agency in a designated financial or information
34 technology position within sixty (60) days before applying for the criminal
35 background check or has lived continuously in the State of Arkansas for the
36 previous 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 employee, the
3 bureau shall issue a report to the state agency.

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

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

9 (d) If 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) A state agency shall inform all employees in designated financial
13 or information technology positions that:

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

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

18 (f) A state agency shall discharge from employment in a designated
19 financial or information technology position an employee who has pleaded
20 guilty or nolo contendere to, or has been found guilty of, any of the
21 following offenses by any court in the State of Arkansas or of any similar
22 offense by a court in another state or of any similar offense by a federal
23 court regardless of any subsequent expungement of the conviction from the
24 person's criminal record, but not including matters excluded from a criminal
25 history check under § 21-15-101(4)(B):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (18) Issuing a false financial statement, as prohibited in § 5-
15 37-205;

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

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

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

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

23 (23) Obtaining signature by deception, as prohibited in § 5-37-
24 210;

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

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

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

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

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

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

33 (30) Theft of communication services, as prohibited in § 5-37-
34 402;

35 (31) Criminal mischief in the first degree, as prohibited in
36 § 5-38-203;

1 (32) Residential or commercial burglary, as prohibited in § 5-
2 39-201;

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

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

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

6 (36) Any offense involving computer crime, as prohibited in
7 §§ 5-41-201 through 5-41-206;

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

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

12 (39) Tampering with a public record, as prohibited in § 5-54-
13 121;

14 (40) Criminal acts constituting Medicaid fraud, as prohibited in
15 § 5-55-111;

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

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

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

24
25 21-15-113. Waiver of exclusion or discharge requirement for persons in
26 designated financial or information technology positions.

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

31 (A) A supervisor or other managerial employee in the state
32 agency;

33 (B) An affected applicant for employment; or

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

36 (2) Application for a waiver must be made within five (5) days

1 of the receipt of the criminal background check.

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

6 (4) If the waiver is not granted and the waiver applicant is an
7 incumbent employee who was not immediately discharged, the agency shall
8 immediately discharge the employee.

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

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

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

18 (2) Evidence of rehabilitation may include:

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

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

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

22 (D) Subsequent work history;

23 (E) Employment references;

24 (F) Character references; and

25 (G) Other evidence demonstrating the rehabilitation of the
26 applicant or employee.

27
28 */s/ Faris*
29
30
31
32
33
34
35
36