

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 H3/18/05

A Bill

SENATE BILL 401

5 By: Senator Faris
6 *By: Representative Reep*
7

For An Act To Be Entitled

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

Subtitle

14 AN ACT TO AMEND THE CRIMINAL BACKGROUND
15 CHECK ACT.
16
17

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

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

22 21-15-101. Definitions.

23 As used in this subchapter:

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

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

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

33 (4) "Criminal history check" means a criminal history report
34 produced by the Identification Bureau of the Department of Arkansas State
35 Police;

36 ~~(4)~~(5) "Designated position" means a position in which a person



1 is employed by a state agency to provide care, supervision, treatment, or any
2 other services to the elderly, to mentally ill or developmentally disabled
3 persons, to individuals with mental illnesses, or to children who reside in
4 any state-operated facility or a position in which the applicant or employee
5 will have direct contact with a child;

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

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

12 (B) Approves security access to information systems;

13 (C) Authenticates and configures user security access to
14 information systems;

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

17 (E) Manages or directs information technology network,
18 application, or system administrators; or

19 (F) Develops, designs, programs, or maintains information
20 technology networks, applications, or systems;

21 ~~(5)~~(7) "Developmentally disabled person" means a person with a
22 disability that is attributable to:

23 (A) Mental retardation, cerebral palsy, epilepsy, or
24 autism;

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

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

32 ~~(6)~~(8) "Direct contact" means the ability to interview,
33 question, examine, interact with, talk with, or communicate with a child
34 without being in the physical presence of a person other than the child;

35 ~~(7)~~(9) "Elderly" means persons age sixty-five (65) or older;

36 ~~(8)~~(10)(A) "Mentally ill persons" means those who suffer from a

1 substantial impairment of emotional processes, or of the ability to exercise
2 conscious control of their actions, or of the ability to perceive reality or
3 to reason when the impairment is manifested in instances of extremely
4 abnormal behavior or extremely faulty perceptions.

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

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

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

15

16 21-15-102. Positions involving direct contact with children and with
17 mentally ill and developmentally disabled persons.

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

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

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

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

34 (ii)(a) The central registry check form to the Child
35 Maltreatment Central Registry, the Adult Abuse and Long-Term Care Facility
36 Resident Maltreatment Central Registry, and the Certified Nursing

1 Assistant/Employment Clearance Registry for a central registry check.

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

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

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

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

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

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

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

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

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

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

3 (B) If the state agency determines that an applicant is
4 disqualified from employment, then the state agency shall deny employment to
5 the applicant.

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

9 (e) Before making a temporary or permanent offer of employment in a
10 designated position, a state agency shall inform applicants 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 applicant has the right to obtain a copy of his or her:

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

15 (B) Central registry report from the registries.

16 (f) ~~No~~ Except as provided in subdivision (g)(2) of this section, no
17 person shall be eligible for employment with a state agency in a designated
18 position if that person 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 unless the conviction was vacated or
22 reversed:

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

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

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

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

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

29 (6) False imprisonment in the first degree, as prohibited in §
30 5-11-103;

31 (7) Permanent detention or restraint, as prohibited in § 5-11-
32 106;

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

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

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

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

- 1 (12) Introduction of controlled substance into body of another
2 person, as prohibited in § 5-13-210;
- 3 (13) Terroristic threatening in the first degree, as prohibited
4 in § 5-13-301;
- 5 (14) Rape, as prohibited in § 5-14-103;
- 6 (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- 7 (16) Sexual assault in the first degree, second degree, third
8 degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- 9 (17) Incest, as prohibited in § 5-26-202;
- 10 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
11 5-26-306;
- 12 (19) Endangering the welfare of an incompetent person in the
13 first degree, as prohibited in § 5-27-201;
- 14 (20) Endangering the welfare of a minor in the first degree, as
15 prohibited in § 5-27-203;
- 16 (21) Permitting abuse of a child, as prohibited in § 5-27-
17 221(a)(1) and (3);
- 18 (22) Engaging children in sexually explicit conduct for use in
19 visual or print medium, transportation of minors for prohibited sexual
20 conduct, pandering or possessing visual or print medium depicting sexually
21 explicit conduct involving a child, or the use of a child or consent to the
22 use of a child in a sexual performance by producing, directing, or promoting
23 a sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-
24 27-402, and 5-27-403;
- 25 (23) Felony adult abuse, as prohibited in § 5-28-103;
- 26 (24) Theft of property, as prohibited in § 5-36-103;
- 27 (25) Theft by receiving, as prohibited in § 5-36-106;
- 28 (26) Arson, as prohibited in § 5-38-301;
- 29 (27) Burglary, as prohibited in § 5-39-201;
- 30 (28) Felony violation of the Uniform Controlled Substances Act,
31 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- 32 (29) Promotion of prostitution in the first degree, as
33 prohibited in § 5-70-104;
- 34 (30) Stalking, as prohibited in § 5-71-229;
- 35 (31) Criminal attempt, criminal complicity, criminal
36 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,

1 5-3-301, and 5-3-401, to commit any of the offenses listed in this
2 subsection;

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

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

7 (g)(1) For purposes of this section, an expunged record of a
8 conviction or plea of guilty or nolo contendere to an offense listed in
9 subdivision (f) of this section shall not be considered a conviction or a
10 plea of guilty or nolo contendere to the offense unless the offense is also
11 listed in subdivision (g)(2) of this section.

12 (2) Because of the serious nature of the following offenses and
13 the close relationship between the following offenses and the type of work
14 that is to be performed by the applicant, a conviction of one (1) or more of
15 the following offenses by an applicant shall result in permanent
16 disqualification from employment in a designated position:

17 (A) Capital murder, as prohibited in § 5-10-101;

18 (B) Murder in the first degree and murder in the second
19 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

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

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

24 (F) Endangering the welfare of a minor in the first degree
25 and endangering the welfare of a minor in the second degree, as prohibited in
26 §§ 5-27-203 and 5-27-204;

27 (G) Incest, as prohibited in § 5-26-202;

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

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

31 (J) Adult abuse that constitutes a felony, as prohibited
32 in § 5-28-103.

33
34 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for
35 persons in designated positions.

36 (a)(1)(A) State agencies shall ensure that all employees in designated

1 positions will have applied for criminal history checks by October 1, 2000,
2 and shall adopt a rule that prescribes how criminal background checks on
3 incumbent employees will be phased in over the period of time prior to
4 July 1, 2000.

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

11 (2) State agencies shall ensure that all employees in designated
12 positions will have applied for central registry checks by October 1, 2002,
13 and shall adopt a rule that prescribes how central registry checks on
14 incumbent employees will be phased in over the period of time prior to
15 July 1, 2002. ~~The rule shall require incumbent employees to apply for~~
16 ~~central registry checks in conjunction with the employee's anniversary of~~
17 ~~employment or any time before that date.~~ An incumbent employee in a
18 designated position shall have subsequent central registry checks completed
19 within five (5) years of the initial central registry check and every five
20 (5) years thereafter.

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

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

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

30 (B)(i) The central registry check to the Child
31 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility
32 Resident Maltreatment Central Registry, and the Certified Nurses Assistants
33 Central Registry to review the databases.

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

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 position within sixty (60) days
6 before the application or has lived continuously in the State of Arkansas for
7 the past five (5) years, the bureau shall conduct only a state criminal
8 history check on the applicant.

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

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

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

16 (d) When 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) If ~~an~~ a waiver applicant has been named as an offender or
20 perpetrator in a true, substantiated, or founded report from the Child
21 Maltreatment Central Registry, the Adult ~~Abuse~~ and Long-Term Care Facility
22 Resident Maltreatment Central Registry, or the Certified Nursing
23 Assistant/Employment Clearance Registry, the state agency shall discharge the
24 employee.

25 (f) A state agency shall inform all employees in designated positions
26 that:

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

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

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

31 (B) Central registry report from the registries.

32 (g) A Except as provided in subdivision (h)(1) of this section, a
33 state agency shall discharge from employment in a designated position any
34 person who has pleaded guilty or nolo contendere to, or been found guilty of,
35 any of the following offenses by any court in the State of Arkansas or of any
36 similar offense by a court in another state or of any similar offense by a

1 federal court, ~~but only after an opportunity for a hearing conducted in~~
2 ~~accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et~~
3 ~~seq.~~ unless the conviction was vacated or reversed:

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

1 conduct, pandering or possessing visual or print medium depicting sexually
2 explicit conduct involving a child, or the use of a child or consent to the
3 use of a child in a sexual performance by producing, directing, or promoting
4 a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-
5 27-305, 5-27-402, and 5-27-403;

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

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

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

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

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

11 (28) Felony violation of the Uniform Controlled Substances Act,
12 §§ 5-64-101 – 5-64-608, as prohibited in § 5-64-401;

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

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

16 (31) Criminal attempt, criminal complicity, criminal
17 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
18 5-3-301, and 5-3-401, to commit any of the offenses listed in this
19 subsection;

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

21 and

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

24 (h)(1) For purposes of this section, an expunged record of a
25 conviction or plea of guilty or nolo contendere to an offense listed in
26 subdivision (g) of this section shall not be considered a conviction or plea
27 of guilty or nolo contendere to the offense unless the offense is also listed
28 in subdivision (h)(2) of this section.

29 (2) Because of the serious nature of the offenses and the close
30 relationship to the type of work that is to be performed, the following shall
31 result in permanent disqualification:

32 (A) Capital murder, as prohibited in § 5-10-101;

33 (B) Murder in the first degree and murder in the second
34 degree, as prohibited in §§ 5-10-102 and 5-10-103;

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

36 (D) Rape, as prohibited in § 5-11-102;

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

3 (F) Endangering the welfare of a minor in the first degree
4 and endangering the welfare of a minor in the second degree, as prohibited in
5 §§ 5-27-203 and 5-27-204;

6 (G) Incest, as prohibited in § 5-26-202;

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

8 (I) Endangering the welfare of an incompetent person in
9 the first degree, as prohibited in § 5-27-201; and

10 (J) Adult abuse that constitutes a felony, as prohibited
11 in § 5-28-103.

12
13 21-15-104. Waiver of exclusion or discharge requirement for persons in
14 designated positions.

15 (a)(1) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-
16 103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a
17 state agency upon the request of:

18 ~~(1)~~(A) A supervisor or other managerial employee in the
19 state agency;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 402, and 5-27-403;
- 2 (10) Felony adult abuse, as prohibited in § 5-28-103;
- 3 (11) Arson, as prohibited in § 5-38-301;
- 4 (12) Computer child pornography, as prohibited in § 5-27-603;
- 5 and
- 6 (13) Computer exploitation of a child in the first degree, as
- 7 prohibited in § 5-27-605.

8

9 SECTION 2. Arkansas Code §§ 21-15-106 and 21-15-107 are amended to

10 read as follows:

11 21-15-106. Rules and regulations - Records.

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

13 financial or information technology position shall adopt the necessary rules

14 and regulations to fully implement the provisions of this subchapter.

15 (b) Each state agency shall maintain on file, subject to inspection by

16 the Arkansas Crime Information Center, the Identification Bureau of the

17 Department of Arkansas State Police, or the Child Maltreatment Central

18 Registry, the Adult ~~Abuse~~ and Long-Term Care Facility Resident Maltreatment

19 Central Registry, or the Certified Nursing Assistant/Employment Clearance

20 Registry evidence that criminal history and central registry checks required

21 by this subchapter have been initiated on all applicants and employees.

22

23 21-15-107. Identification Bureau and registries - Duties.

24 (a)(1) After receipt of a request for a criminal history check, the

25 *Identification Bureau of the Department of Arkansas State Police shall make*

26 *reasonable* efforts to respond to requests for state criminal history checks

27 within twenty (20) calendar days and to respond to requests for national

28 criminal history checks within ten (10) calendar days after the receipt of a

29 national criminal history check from the Federal Bureau of Investigation.

30 (2) After receipt of a request for a central registry check, the

31 registry shall make reasonable efforts to respond to requests within twenty

32 (20) calendar days.

33 (b)(1) *Upon completion of a criminal history check, the Identification*

34 *Bureau of the Department of Arkansas State Police shall forward all*

35 *information* obtained concerning the applicant or employee to the Arkansas

36 Crime Information Center.

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

4 (c) *The Identification Bureau of the Department of Arkansas State*
5 *Police shall maintain a database of the results of criminal history checks on*
6 *each 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 shall develop a form to be used for criminal history checks conducted*
10 *under this subchapter. The form shall require the notarized signature of the*
11 *person who is the subject of the check.*

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

18
19 SECTION 3. Arkansas Code Title 21, Chapter 15, Subchapter 1, is
20 amended to add the following new sections:

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

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

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

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

36 (2) If no criminal history records regarding the applicant are

1 found in the database, then the state agency may make an offer of temporary
2 employment to the applicant while the bureau completes a criminal history
3 check and the state agency determines whether the applicant is disqualified
4 from employment under subsection (f) of this section.

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

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

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 financial or information
18 technology position within sixty (60) days before the application or has
19 lived continuously in the State of Arkansas for the past five (5) years, the
20 bureau shall conduct only a state criminal history check on the applicant.

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

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

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

28 (d) If 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) Before making a temporary or permanent offer of employment, a
32 state agency shall inform applicants that:

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

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

1 (f) An expunged record of a conviction or plea of guilty or nolo
2 contendere to an offense listed in this subsection (f) shall not be
3 considered a conviction or plea of guilty or nolo contendere to the offense.
4 No person shall be eligible for employment with a state agency in a
5 designated financial or information technology position if that person has
6 pleaded guilty or nolo contendere to, or has been found guilty of, any of the
7 following offenses by any court in the State of Arkansas or of any similar
8 offense by a court in another state or of any similar offense by a federal
9 court unless the conviction was vacated, or reversed:

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

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

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

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

22 (B) The state agency shall:

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

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

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

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

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

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

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

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

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

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

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

17 (f) An expunged record of a conviction or plea of guilty or nolo
18 contendere to an offense listed in this subsection (f) shall not be
19 considered a conviction or plea of guilty or nolo contendere to the offense.
20 A state agency shall discharge from employment in a designated financial or
21 information technology position an employee who has pleaded guilty or nolo
22 contendere to, or has been found guilty of, any of the following offenses by
23 any court in the State of Arkansas or of any similar offense by a court in
24 another state or of any similar offense by a federal court unless the
25 conviction was vacated or reversed:

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