

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 610

4  
5 By: Senator B. Johnson  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO CHANGE THE CRIMINAL BACKGROUND CHECK  
10 REQUIREMENTS FOR THE ARKANSAS BOARD OF EXAMINERS  
11 IN COUNSELING; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO CHANGE THE CRIMINAL BACKGROUND  
15 CHECK REQUIREMENTS FOR THE ARKANSAS  
16 BOARD OF EXAMINERS IN COUNSELING.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 17-27-313 is amended to read as follows:  
22 17-27-313. Criminal background checks.

23 (a) ~~On and after October 1, 1997, The Arkansas Board of Examiners in~~  
24 Counseling may require each applicant for license renewal and each first-time  
25 applicant for a license issued by the Arkansas Board of Examiners in  
26 Counseling ~~shall be required~~ to apply to the Identification Bureau of the  
27 Department of Arkansas State Police for a state and national criminal  
28 background check, to be conducted by the Identification Bureau and the  
29 Federal Bureau of Investigation.

30 (b) The check shall conform to the applicable federal standards and  
31 shall include the taking of fingerprints.

32 (c) The applicant shall sign a release of information to the board and  
33 shall be responsible ~~to the Department of Arkansas State Police~~ for the  
34 payment of any fee associated with the criminal background check.

35 (d) Upon completion of the criminal background check, the  
36 Identification Bureau of the Department of Arkansas State Police shall



1 forward to the board all releasable information obtained concerning the  
 2 applicant ~~in the commission of any offense listed in subsection (f) of this~~  
 3 ~~section to the board.~~

4 ~~(e) At the conclusion of any background check required by this~~  
 5 ~~section, the Identification Bureau of the Department of Arkansas State Police~~  
 6 ~~shall promptly destroy the fingerprint card of the applicant.~~

7 ~~(f)~~(e) No person shall be eligible to receive or hold a license issued  
 8 by the board if that person has pleaded guilty or nolo contendere to, or been  
 9 found guilty of, any of the following offenses by any court in the State of  
 10 Arkansas or of any similar offense by a court in another state or of any  
 11 similar offense by a federal court regardless of whether the conviction has  
 12 been sealed/expunged or pardoned:

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

- 1 5-26-306;
- 2 (19) Endangering the welfare of an incompetent person in the
- 3 first degree, as prohibited in § 5-27-201;
- 4 (20) Endangering the welfare of a minor in the first degree, as
- 5 prohibited in § 5-27-203;
- 6 (21) Permitting abuse of a child, as prohibited in § 5-27-
- 7 221(a)(1) and (3);
- 8 (22) Engaging children in sexually explicit conduct for use in
- 9 visual or print media, transportation of minors for prohibited sexual
- 10 conduct, pandering or possessing visual or print medium depicting sexually
- 11 explicit conduct involving a child, or use of a child or consent to use of a
- 12 child in a sexual performance by producing, directing, or promoting a sexual
- 13 performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402,
- 14 and 5-27-403;
- 15 (23) Felony adult abuse, as prohibited in § 5-28-103;
- 16 (24) Theft of property, as prohibited in § 5-36-103;
- 17 (25) Theft by receiving, as prohibited in § 5-36-106;
- 18 (26) Arson, as prohibited in § 5-38-301;
- 19 (27) Burglary, as prohibited in § 5-39-201;
- 20 (28) Felony violation of the Uniform Controlled Substances Act,
- 21 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
- 22 (29) Promotion of prostitution in the first degree, as
- 23 prohibited in § 5-70-104;
- 24 (30) Stalking, as prohibited in § 5-71-229;
- 25 (31) Criminal attempt, criminal complicity, criminal
- 26 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
- 27 5-3-301, and 5-3-401, to commit any of the offenses listed in this
- 28 subsection;
- 29 (32) Computer child pornography, as prohibited in § 5-27-603;
- 30 ~~and~~
- 31 (33) Computer exploitation of a child in the first degree, as
- 32 prohibited in § 5-27-605-~~r~~;
- 33 (34) Abuse of an athletic contest official, as prohibited in §
- 34 5-13-209;
- 35 (35) Adult abuse, as prohibited in § 5-28-103;
- 36 (36) Aggravated assault upon an employee of a correctional

- 1 facility, as prohibited in § 5-13-211;  
2 (37) Aggravated riot, as prohibited in § 5-71-202;  
3 (38) Arming rioters, as prohibited in § 5-71-204;  
4 (39) Assault in the first degree, as prohibited in § 5-13-205;  
5 (40) Assault on family or household member in the first degree,  
6 as prohibited in § 5-26-307;  
7 (41) Assault on family or household member in the second degree,  
8 as prohibited in § 5-26-308;  
9 (42) Assault on family or household member in the third degree,  
10 as prohibited in § 5-26-309;  
11 (43) Assault on wife in the first degree, as formerly prohibited  
12 by § 5-26-305;  
13 (44) Assault on wife in the second degree, as formerly  
14 prohibited by § 5-26-306;  
15 (45) Assault on wife in the third degree, as formerly prohibited  
16 by § 5-26-307;  
17 (46) Assault in the second degree, as prohibited in § 5-13-206;  
18 (47) Assault in the third degree, as prohibited in § 5-13-207;  
19 (48) Battery in the second degree, as prohibited in § 5-13-202;  
20 (49) Battery in the third degree, as prohibited in § 5-13-203;  
21 (50) Bigamy, as prohibited in § 5-26-201;  
22 (51) Booby traps, as prohibited in § 5-73-126;  
23 (52) Breaking or entering, as prohibited in § 5-39-202;  
24 (53) Carnal abuse in the first degree, as formerly prohibited by  
25 § 5-14-104;  
26 (54) Carnal abuse in the second degree, as formerly prohibited  
27 by § 5-14-105;  
28 (55) Carnal abuse in the third degree, as formerly prohibited by  
29 § 5-14-106;  
30 (56) Carrying a knife as a weapon, as prohibited in § 5-73-121;  
31 (57) Carrying a weapon, as prohibited in § 5-73-120;  
32 (58) Carrying a weapon in a publicly owned building or facility,  
33 as prohibited in § 5-73-122;  
34 (59) Coercion, as prohibited in § 5-13-208;  
35 (60) Residential or commercial burglary, as prohibited in § 5-  
36 39-201;

- 1           (61) Communicating a false alarm, as prohibited in § 5-71-210;  
2           (62) Computer fraud, as prohibited in § 5-41-103;  
3           (63) Computer trespass, as prohibited in § 5-41-104;  
4           (64) Concealing birth, as prohibited in § 5-26-203;  
5           (65) Contributing to the delinquency of a juvenile, as  
6 prohibited in § 5-27-220;  
7           (66) Criminal impersonation in the first degree, as prohibited  
8 in § 5-37-208;  
9           (67) Criminal impersonation in the second degree, as prohibited  
10 in § 5-37-208;  
11           (68) Criminal mischief in the first degree, as prohibited in §  
12 5-38-203;  
13           (69) Criminal mischief in the second degree, as prohibited in §  
14 5-38-204;  
15           (70) Criminal possession of explosives, as prohibited in § 5-73-  
16 108;  
17           (71) Criminal trespass in or on a vehicle or structure, as  
18 prohibited in § 5-39-203;  
19           (72) Criminal use of prohibited weapons, as prohibited in § 5-  
20 73-104;  
21           (73) Cruelty to animals, as prohibited in § 5-62-101;  
22           (74) Communicating a death threat concerning a school employee  
23 or student, as prohibited in § 5-17-101;  
24           (75) Defacing a firearm, as prohibited in § 5-73-106;  
25           (76) Disorderly conduct, as prohibited in § 5-71-207;  
26           (77) Distributing, possessing, or viewing matter depicting  
27 sexually explicit conduct involving child, as prohibited in § 5-27-602;  
28           (78) Distribution to minors, as prohibited in § 5-64-406;  
29           (79) Drinking in public, as prohibited in § 5-71-212;  
30           (80) Drug paraphernalia, as prohibited in § 5-64-403;  
31           (81) Two or more violations of the Omnibus DWI Act, as  
32 prohibited in § 5-65-101 et seq.;  
33           (82) Endangering the welfare of a minor in the second degree, as  
34 prohibited in § 5-27-204;  
35           (83) Endangering the welfare of an incompetent person in the  
36 second degree, as prohibited in § 5-27-202;

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

3           (85) Engaging in conduct with respect to controlled substances,  
4 as prohibited in § 5-64-401 et seq.;

5           (86) Engaging in violent criminal group activity, as prohibited  
6 in § 5-74-108;

7           (87) Escape in the first degree, as prohibited in § 5-54-110;

8           (88) Escape in the second degree, as prohibited in § 5-54-111;

9           (89) Escape in the third degree, as prohibited in § 5-54-112;

10          (90) Exposing another person to human immunodeficiency virus, as  
11 prohibited in § 5-14-123;

12          (91) Exposing a child to a chemical substance or  
13 methamphetamine, as prohibited in § 5-27-230;

14          (92) Failure to keep records, maintaining premises, as  
15 prohibited in § 5-64-402;

16          (93) Failure to report computer child pornography, as prohibited  
17 in § 5-27-604;

18          (94) False imprisonment in the second degree, as prohibited in §  
19 5-11-104;

20          (95) Filing a false report with a law enforcement agency, as  
21 prohibited in § 5-54-122;

22          (96) Financial identity fraud, as prohibited in § 5-37-227;

23          (97) Fleeing, as prohibited in § 5-54-125;

24          (98) Forgery, as prohibited in § 5-37-201;

25          (99) Fraudulent use of a credit or debit card, as prohibited in  
26 § 5-37-207;

27          (100) Furnishing a deadly weapon to a minor, as prohibited in §  
28 5-73-109;

29          (101) Furnishing a handgun or a prohibited weapon to a felon, as  
30 prohibited in § 5-73-129;

31          (102) Harassing communications, as prohibited in § 5-71-209;

32          (103) Harassment, as prohibited in § 5-71-208;

33          (104) Hindering apprehension or prosecution, as prohibited in §  
34 5-54-105;

35          (105) Violation of the Arkansas Hot Check Law, as prohibited in  
36 § 5-37-301 et seq.;

- 1           (106) Indecent exposure, as prohibited in § 5-14-112;  
2           (107) Interference with a law enforcement officer, as prohibited  
3 in § 5-54-104;  
4           (108) Interference with custody, as prohibited in § 5-26-502;  
5           (109) Interference with visitation, as prohibited in § 5-26-501;  
6           (110) Intimidating a juror, as prohibited in § 5-53-114;  
7           (111) Intimidating a witness, as prohibited in § 5-53-109;  
8           (112) Juror bribery, as prohibited in § 5-53-113;  
9           (113) Jury tampering, as prohibited in § 5-53-115;  
10          (114) Loitering, as prohibited in § 5-71-213;  
11          (114) Manufacture or altering personal identification document,  
12 as prohibited in § 5-27-502;  
13          (116) Neglect of a minor resulting in delinquency, as prohibited  
14 in § 5-27-222;  
15          (117) Nonsupport, as prohibited in § 5-26-401;  
16          (118) Obscene performance at a live public show, as prohibited  
17 in § 5-68-305;  
18          (119) Obstructing governmental operations, as prohibited in § 5-  
19 54-102;  
20          (120) Obtaining drugs by fraud, as prohibited in § 5-64-403;  
21          (121) Obtaining signature by deception, as prohibited in § 5-37-  
22 210;  
23          (122) Patronizing a prostitute, as prohibited in § 5-70-103;  
24          (123) Perjury, as prohibited in § 5-53-102;  
25          (124) Possessing an instrument of a crime, as prohibited in § 5-  
26 73-102;  
27          (125) Possession of a defaced firearm, as prohibited in § 5-73-  
28 107;  
29          (126) Possession of firearms by certain persons, as prohibited §  
30 5-73-103;  
31          (127) Possession of fraudulent or altered personal ID document,  
32 as prohibited in § 5-27-503;  
33          (128) Possession of handgun by minor or possession on school  
34 property, as prohibited in § 5-73-119;  
35          (129) Possession of machine gun for offensive or aggressive  
36 purposes, as prohibited in § 5-73-204;

- 1           (130) Possession or use of weapons by incarcerated persons, as  
2 prohibited in § 5-73-131;
- 3           (131) Promoting obscene materials, as prohibited in § 5-68-303;  
4           (132) Promoting an obscene performance, as prohibited in § 5-68-  
5 304;
- 6           (133) Promoting prostitution in the second degree, as prohibited  
7 in § 5-70-105;
- 8           (134) Promoting prostitution in the third degree, as prohibited  
9 in § 5-70-106;
- 10           (135) Prostitution, as prohibited in § 5-70-102;
- 11           (136) Public display of obscenity, as prohibited in § 5-68-205;
- 12           (137) Public intoxication, as prohibited in § 5-71-212;
- 13           (138) Public servant bribery, as prohibited in § 5-52-103;
- 14           (139) Public sexual indecency, as prohibited in § 5-14-111;
- 15           (140) Reckless burning, as prohibited in § 5-38-302;
- 16           (141) Refusal to submit (Implied consent), as prohibited in §§  
17 5-65-205 and 5-65-310;
- 18           (142) Resisting arrest, as prohibited in § 5-54-103;
- 19           (143) Riot, as prohibited in § 5-71-201;
- 20           (144) Sale, rental, or transfer of a firearm to a person  
21 prohibited from possessing a firearm, as prohibited in § 5-73-132;
- 22           (145) School bus piracy, as prohibited in § 5-11-107;
- 23           (146) Sexual abuse in the first degree, as formerly prohibited  
24 in § 5-14-108;
- 25           (147) Sexual abuse in the second degree, as formerly prohibited  
26 in § 5-14-109;
- 27           (148) Sexual misconduct, as formerly prohibited in § 5-14-107;
- 28           (149) Simultaneous possession of drugs and firearms, as  
29 prohibited in § 5-74-106;
- 30           (150) Sodomy, as formerly prohibited in § 5-14-122;
- 31           (151) Soliciting money or property from incompetents, as  
32 prohibited in § 5-27-229;
- 33           (152) Tampering with a public record, as prohibited in § 5-54-  
34 121;
- 35           (153) Terroristic act, as prohibited in § 5-13-310;
- 36           (154) Terroristic threatening in the second degree, as



1 prohibited in § 5-13-301;

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

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

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

7 (158) Theft of services, as prohibited in § 5-36-104;

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

9 (160) Third degree assault on wife, as formerly prohibited in §  
10 5-26-307;

11 (161) Threatening a fire or bombing, as prohibited in § 5-71-  
12 211;

13 (162) Unauthorized use of a vehicle, as prohibited in § 5-36-  
14 108;

15 (163) Unlawful assembly, as prohibited in § 5-71-205;

16 (164) Unlawful computerized communications, as prohibited in §  
17 5-41-108;

18 (165) Unlawful discharge of a firearm from a vehicle, as  
19 prohibited in § 5-74-107;

20 (166) Vehicular piracy, as prohibited in § 5-11-105;

21 (167) Voyeurism offenses, as prohibited in § 5-16-101 et seq.;

22 (168) Wife battering in the first degree, as formerly prohibited  
23 in § 5-26-301; and

24 (169) Wife battering in the second degree, as formerly  
25 prohibited in § 5-26-302.

26 (f) No person shall be eligible to receive or hold a license issued by  
27 the board if that person is a registered sex offender or is required to  
28 register as a sex offender pursuant to the Sex Offender Registration Act of  
29 1997, § 12-12-901 et seq.

30 (g)(1) The board may issue a six-month nonrenewable letter of  
31 provisional eligibility for licensure to a first-time applicant pending the  
32 results of the criminal background check.

33 (2) Upon receipt of information from the Identification Bureau  
34 of the Department of Arkansas State Police that the person holding such a  
35 letter of provisional licensure has pleaded guilty or nolo contendere to, or  
36 been found guilty of, any offense listed in subsection (f) of this section,

1 the board shall immediately revoke the provisional license.

2 (h)(1) The provisions of ~~subsection~~ subsections (e) and (f) and  
3 subdivision (g)(2) of this section may be waived by the board upon the  
4 request of:

- 5 (A) An affected applicant for licensure; or
- 6 (B) The person holding a license subject to revocation.

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

- 9 (A) The age at which the crime was committed;
- 10 (B) The circumstances surrounding the crime;
- 11 (C) The length of time since the crime;
- 12 (D) Subsequent work history;
- 13 (E) Employment references;
- 14 (F) Character references; and
- 15 (G) Other evidence demonstrating that the applicant does

16 not pose a threat to the health or safety of children.

17 (i)(1) Any information received by the board from the Identification  
18 Bureau of the Department of Arkansas State Police pursuant to this section  
19 shall not be available for examination except by the affected applicant for  
20 licensure, or his or her authorized representative, or the person whose  
21 license is subject to revocation, or his or her authorized representative.

22 (2) No record, file, or document shall be removed from the  
23 custody of the Department of Arkansas State Police.

24 (j) Any information made available to the affected applicant for  
25 licensure or the person whose license is subject to revocation shall be  
26 information pertaining to that person only.

27 (k) Rights of privilege and confidentiality established herein shall  
28 not extend to any document created for purposes other than this background  
29 check.

30 (l) The board shall adopt the necessary rules and regulations to fully  
31 implement the provisions of this section.

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