

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 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/13/07

# A Bill

HOUSE BILL 1012

5 By: Representative Abernathy  
6  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE THAT CERTAIN EXPUNGED OFFENSES  
10 CAUSE DISQUALIFICATION FROM EMPLOYMENT,  
11 LICENSURE, CERTIFICATION, OR OTHER ACTIVITIES FOR  
12 PERSONS SUBJECT TO BACKGROUND CHECKS; TO CREATE A  
13 UNIFORM LIST OF DISQUALIFYING OFFENSES FOR  
14 CRIMINAL HISTORY BACKGROUND CHECKS; TO AUTHORIZE  
15 WAIVER OF THE DISQUALIFICATION UNDER CERTAIN  
16 CIRCUMSTANCES; AND FOR OTHER PURPOSES.

## Subtitle

17  
18  
19 TO PROVIDE THAT CERTAIN EXPUNGED  
20 OFFENSES CAUSE DISQUALIFICATION FROM  
21 CERTAIN ACTIVITIES FOR PERSONS SUBJECT  
22 TO CRIMINAL BACKGROUND CHECKS AND TO  
23 AUTHORIZE WAIVER OF THE DISQUALIFICATION  
24 UNDER CERTAIN CIRCUMSTANCES.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

29 SECTION 1. Arkansas Code Title 3, Chapter 1, Subchapter 1 is amended  
30 to add an additional section to read as follows:

31 3-1-104. Applications – Contents.

32 (a) Except as provided in this section, no person who is required to  
33 have a criminal records background check under this Title 3 shall be eligible  
34 to hold a position, permit, or license if that person has pleaded guilty or  
35 nolo contendere to, or has been found guilty of, any felony or Class A  
36 misdemeanor offense by any court in the State of Arkansas or of any similar



1 offense by a court in another state or of any similar offense by a federal or  
2 military court, regardless of whether the record of the conviction is sealed  
3 or expunged or the conviction is pardoned.

4 (b)(1) The Alcoholic Beverage Control Board may waive the  
5 disqualification described in subsection (a) of this section and allow a  
6 person to hold a position, permit, or license upon making a determination  
7 that the person does not pose a risk of harm to any other person served by  
8 the board or to any persons to be served by the person holding the position,  
9 permit, or license.

10 (2) In making a disqualification waiver determination under  
11 subdivision (b)(1) of this section, the board may consider the following  
12 factors:

13 (A) The nature and severity of the offense;

14 (B) The consequences of the offense;

15 (C) The number and frequency of offenses;

16 (D) The relation between the crime and the health, safety,  
17 and welfare of persons served by the board, such as:

18 (i) The age and vulnerability of any victim of the  
19 offense;

20 (ii) The harm suffered by any victim; and

21 (iii) The similarity between any victim and persons  
22 served by the board;

23 (E) The time elapsed without a repeat of the same or  
24 similar offense;

25 (F) Documentation of successful completion of training or  
26 rehabilitation concerning the offense; and

27 (G) Any other relevant information.

28 (c) The board's decision to refuse to waive disqualification from  
29 holding a position, permit, or license under this section shall constitute  
30 the final administrative agency action and shall not be subject to review.

31  
32 SECTION 2. Arkansas Code § 3-2-103 is amended to read as follows:

33 3-2-103. Information to be submitted by applicants.

34 (a)(1) Any person applying for any permit issued by the Alcoholic  
35 Beverage Control Division, except as provided in subsection (b) or (c) of  
36 this section, shall be subject to an eligibility determination under § 3-1-

1 ~~104. meet the following requirements:~~

2 ~~(1) No applicant shall have been found guilty of or pleaded~~  
3 ~~guilty or nolo contendere to:~~

4 ~~(A) Any felony by any court in the State of Arkansas; or~~

5 ~~(B) Any similar offense by a court in another state or of~~  
6 ~~any similar offense by a military or federal court;~~

7 (2)(A) In order to determine the applicant's suitability for a  
8 permit, the applicant shall be fingerprinted, and the fingerprints shall be  
9 forwarded for a criminal background check through the Department of Arkansas  
10 State Police.

11 (B) After the completion of the criminal background check  
12 through the department, the fingerprints shall be forwarded by the department  
13 to the Federal Bureau of Investigation for a national criminal history record  
14 check; ~~and.~~

15 (3) The applicant shall sign a release that allows the  
16 department to release:

17 (A) An Arkansas noncriminal justice background check to  
18 the Alcoholic Beverage Control Board; and

19 (B) A fingerprint card of the applicant to the bureau to  
20 allow a federal fingerprint-based background check to be performed.

21 (b) No fingerprint submission or criminal background check shall be  
22 required for any person applying for a nonresident seller's permit or for a  
23 wholesale support center permit as authorized by § 3-5-1301 et seq.

24 (c) No fingerprint submission shall be required for any person  
25 applying for any permit that has a stated duration of five (5) days or less.

26 (d) This section is supplementary to any and all requirements that  
27 exist for various permits issued by the division, and all other individual  
28 permit requirements shall continue to apply to those respective permit  
29 applications.

30 (e) The division may adopt rules to implement the provisions of this  
31 section.

32  
33 SECTION 3. Arkansas Code § 6-17-410 is amended to read as follows:

34 6-17-410. Teacher licensure - First-time applicant, renewal  
35 application, revocation, suspension, and probation.

36 (a)(1)(A)(i) Each first-time applicant for a license issued by the

1 State Board of Education and each applicant for his or her first license  
2 renewal on or after July 1, 1997, shall be required to apply to the  
3 Identification Bureau of the Department of Arkansas State Police for a  
4 statewide and nationwide criminal records check, to be conducted by the  
5 Department of Arkansas State Police and the Federal Bureau of Investigation.

6 (ii) The check shall conform to the applicable  
7 federal standards and shall include the taking of fingerprints.

8 (iii) The Identification Bureau of the Department of  
9 Arkansas State Police may maintain these fingerprints in the automated  
10 fingerprint identification system.

11 ~~(iv) The Federal Bureau of Investigation shall~~  
12 ~~promptly destroy the fingerprint card of the applicant.~~

13 (B) The applicant shall sign a release of information to  
14 the Department of Education and shall be responsible for the payment of any  
15 fee associated with the criminal records check.

16 (C)(i) The Department of Education shall be responsible  
17 for the payment of any fee associated with the criminal records check at the  
18 time of license renewal for employees of Arkansas public school districts,  
19 employees of other public education institutions located in Arkansas, and  
20 employees of the Department of Education.

21 (ii) Funding for the fees shall come from the Public  
22 School Fund.

23 (2) Upon completion of the criminal records check, the  
24 Identification Bureau of the Department of Arkansas State Police shall  
25 forward all releasable information obtained concerning the applicant to the  
26 Department of Education.

27 (b)(1) The state board is authorized to issue a six-month nonrenewable  
28 letter of provisional eligibility for licensure to a first-time applicant  
29 pending the results of the criminal records check. However, the Commissioner  
30 of Education may extend the period of provisional eligibility to the end of  
31 that contract year if:

32 (A) The applicant is employed by a local school district;  
33 and

34 (B) The results of the criminal records check are delayed.

35 (2) Upon receipt of information from the Identification Bureau  
36 of the Department of Arkansas State Police that the person holding a letter

1 of provisional eligibility for licensure has pleaded guilty or nolo  
2 contendere to or has been found guilty of any offense in subsection (c) of  
3 this section, the state board shall immediately revoke the provisional  
4 eligibility as provided under subsection (c) of this section.

5 ~~(c) The state board shall not issue a first-time license nor renew an  
6 existing license and shall revoke any existing license not up for renewal of  
7 any person who has pleaded guilty or nolo contendere to or has been found  
8 guilty of any of the following offenses by any court in the State of Arkansas  
9 or of any similar offense by a court in another state or of any similar  
10 offense by a federal court but only after an opportunity for a hearing before  
11 the board upon reasonable notice in writing:~~

12 ~~(1) Capital murder as prohibited in § 5-10-101;~~

13 ~~(2) Murder in the first degree as prohibited in § 5-10-102 and  
14 murder in the second degree as prohibited in § 5-10-103;~~

15 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

16 ~~(4) Battery in the first degree as prohibited in § 5-13-201 and  
17 battery in the second degree as prohibited in § 5-13-202;~~

18 ~~(5) Aggravated assault as prohibited in § 5-13-204;~~

19 ~~(6) Terroristic threatening in the first degree as prohibited in  
20 § 5-13-301;~~

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

22 ~~(8) Rape as prohibited in § 5-14-103;~~

23 ~~(9) Sexual assault in the first degree, second degree, third  
24 degree, and fourth degree as prohibited in § 5-14-124—5-14-127;~~

25 ~~(10) Incest as prohibited in § 5-26-202;~~

26 ~~(11) Engaging children in sexually explicit conduct for use in  
27 visual or print media, transportation of minors for prohibited sexual  
28 conduct, employing or consenting to the use of a child in a sexual  
29 performance, or producing, directing, or promoting a sexual performance by a  
30 child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

31 ~~(12) Distribution to minors as prohibited in § 5-64-406;~~

32 ~~(13) Any felony in violation of the Uniform Controlled  
33 Substances Act, § 5-64-101 et seq.;~~

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

35 ~~(15) Endangering the welfare of a minor in the first degree as  
36 prohibited in § 5-27-205;~~

1 ~~(16) Pandering or possessing visual or print medium depicting~~  
2 ~~sexually explicit conduct involving a child as prohibited by § 5-27-304;~~

3 ~~(17) False imprisonment in the first degree as prohibited in §~~  
4 ~~5-11-103;~~

5 ~~(18) Permanent detention or restraint as prohibited in § 5-11-~~  
6 ~~106;~~

7 ~~(19) Permitting abuse of a child as prohibited in § 5-27-~~  
8 ~~221(a)(1) and (3);~~

9 ~~(20) Negligent homicide as prohibited by § 5-10-105(a);~~

10 ~~(21) Assault in the first degree as prohibited by § 5-13-205;~~

11 ~~(22) Coercion as prohibited by § 5-13-208;~~

12 ~~(23) Public sexual indecency as prohibited by § 5-14-111;~~

13 ~~(24) Indecent exposure as prohibited by § 5-14-112;~~

14 ~~(25) Endangering the welfare of a minor in the second degree as~~  
15 ~~prohibited by § 5-27-206;~~

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

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

20 ~~(28) Computer exploitation of a child in the first degree as~~  
21 ~~prohibited in § 5-27-605. Except as provided in subsection (d) of this~~  
22 ~~section, no person shall be eligible to hold provisional eligibility for~~  
23 ~~licensure, a first-time license, or a renewal license, and the state board~~  
24 ~~shall immediately revoke provisional eligibility for licensure, a first-time~~  
25 ~~license, or a renewal license if that person has pleaded guilty or nolo~~  
26 ~~contendere to, or has been found guilty of, any felony or Class A misdemeanor~~  
27 ~~offense by any court in the State of Arkansas or of any similar offense by a~~  
28 ~~court in another state or of any similar offense by a federal or military~~  
29 ~~court, regardless of whether the record of the conviction is sealed or~~  
30 ~~expunged or the conviction is pardoned.~~

31 (d)(1) The eligibility and revocation provisions of subsection (c) of  
32 this section may be waived or a license may be suspended or placed on  
33 probation by the state board upon request by:

34 (A) The board of a local school district;

35 (B) An affected applicant for licensure; or

36 (C) The person holding a license subject to revocation.

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

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

4                   (B) *The circumstances surrounding the crime;*

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

6                   (D) *Subsequent work history;*

7                   (E) *Employment references;*

8                   (F) *Character references; and*

9                   (G) *Other evidence demonstrating that the applicant does*  
10 *not pose a threat to the health or safety of school children or school*  
11 *personnel.*

12           (e)(1) *For cause as set forth in subdivision (e)(2) of this section,*  
13 *the state board may revoke, suspend, or place on probation the license of any*  
14 *person but only after an opportunity for a hearing before the state board*  
15 *upon reasonable written notice of the cause to be considered and only if a*  
16 *written request for a hearing is received by the state board no less than*  
17 *thirty (30) days after the notice of the cause is received by the person*  
18 *holding the license.*

19           (2) *For the purposes of this subsection, "cause" means any of*  
20 *the following:*

21                   (A) *Pleading guilty or nolo contendere to or having been*  
22 *found guilty of a felony ~~not listed in subsection (e) of this section in any~~*  
23 *~~court in this state or of a similar felony in a court in another state or in~~*  
24 *~~a federal court;~~*

25                   (B) *Pleading guilty or nolo contendere to or having been*  
26 *found guilty in a court:*

27                           (i) *In this state of a nonfelony negligent homicide*  
28 *or a misdemeanor ~~not listed in subsection (e) of this section and involving~~*  
29 *physical injury, mistreatment, or abuse against a child or against a*  
30 *household member of the licensee; or*

31                           (ii) *In another state or in federal court of a crime*  
32 *similar to a nonfelony negligent homicide or a misdemeanor not listed in*  
33 *subsection (c) of this section and involving physical injury, mistreatment,*  
34 *or abuse against a child or against a household member of the licensee;*

35                   (C) *Holding a license obtained by fraudulent means;*

36                   (D) *Revocation of a license in another state;*

1                   (E) Intentionally compromising the validity or security of  
2 any student test or testing program administered by or required by the state  
3 board or the Department of Education;

4                   (F) Having the completed examination test score of any  
5 testing program required by the state board for teacher licensure declared  
6 invalid by the testing program company and so reported to the Department of  
7 Education by the testing company;

8                   (G) Having an expunged or a pardoned conviction for any  
9 sexual or physical abuse offense committed against a child;

10                  (H) Failing to establish or maintain the necessary  
11 requirements and standards set forth in Arkansas law or state board rules and  
12 regulations for teacher licensure;

13                  (I) Knowingly submitting or providing false or misleading  
14 information or knowingly failing to submit or provide information requested  
15 or required by law to the Department of Education, the state board, or the  
16 Division of Legislative Audit; or

17                  (J) Knowingly falsifying or directing another to falsify  
18 any grade given to a student, whether the grade was given for an individual  
19 assignment or examination or at the conclusion of a regular grading period.

20                  (3) For purposes of this subsection, "child" means a person  
21 enrolled in the public schools of the State of Arkansas.

22                  (f)(1) The superintendent of each school district shall report to the  
23 state board the name of any person holding a license issued by the state  
24 board and currently employed or employed during the two (2) previous school  
25 years by the local school district who:

26                   (A) Has pleaded guilty or nolo contendere to or has been  
27 found guilty of a felony or any misdemeanor listed in [nc69]subsection (c) of  
28 this section;

29                   (B) Holds a license obtained by fraudulent means;

30                   (C) Has had a similar license revoked in another state;

31                   (D) Has intentionally compromised the validity or security  
32 of any student test or testing program administered or required by the  
33 Department of Education;

34                   (E) Has knowingly submitted falsified information or  
35 failed to submit information requested or required by law to the Department  
36 of Education, the state board, or the division; or

1                   (F) Has failed to establish or maintain the necessary  
2 requirements and standards set forth in Arkansas law or Department of  
3 Education rules and regulations for teacher licensure.

4                   (2) Failure of a superintendent to report information as  
5 required by this subsection may result in sanctions imposed by the state  
6 board.

7                   (g) For cause as stated in subsection (e) of this section, the state  
8 board is authorized to:

9                   (1) Revoke a license permanently;

10                   (2) Suspend a license for a terminable period of time or  
11 indefinitely; or

12                   (3) Place a person on probationary status for a terminable  
13 period of time with the license to be revoked or suspended if the  
14 probationary period is not successfully completed.

15                   (h) Upon notice in writing that a revocation, suspension, or probation  
16 is being sought by the state board for a cause set forth, a person may:

17                   (1) Decline to answer the notice, in which case a hearing will  
18 be held before the state board to establish by a preponderance of the  
19 evidence that cause for the proposed action exists;

20                   (2) Contest the complaint, in which case the person shall be  
21 given an evidentiary hearing before the state board if one is requested;

22                   (3) Admit the allegations of fact and request a hearing before  
23 the state board in mitigation of any penalty which may be assessed; or

24                   (4) Stipulate or reach a negotiated agreement which must be  
25 approved by the state board.

26                   (i)(1) Any information received by the Department of Education from  
27 the Identification Bureau of the Department of Arkansas State Police pursuant  
28 to subsection (a) of this section shall not be available for examination  
29 except by the affected applicant for licensure or his or her duly authorized  
30 representative, and no record, file, or document shall be removed from the  
31 custody of the Department of Education.

32                   (2) Any information made available to the affected applicant for  
33 licensure or the person whose license is subject to revocation shall be  
34 information pertaining to that applicant only.

35                   (3) Rights of privilege and confidentiality established under  
36 this section shall not extend to any document created for purposes other than

1    *this background check.*

2           *(j) The state board shall adopt the necessary rules and regulations to*  
3 *fully implement the provisions of this section.*

4

5           *SECTION 4. Arkansas Code § 6-17-414 is amended to read as follows:*

6           *6-17-414. Criminal records check as a condition for initial employment*  
7 *of noncertified personnel.*

8           *(a)(1)(A)(i) Except as provided in subdivision (a)(1)(C) of this*  
9 *section, the board of directors of a local school district or an education*  
10 *service cooperative shall require as a condition for initial employment in a*  
11 *noncertified staff position any person making application to apply to the*  
12 *Identification Bureau of the Department of Arkansas State Police for*  
13 *statewide and nationwide criminal records checks, the latter to be conducted*  
14 *by the Federal Bureau of Investigation.*

15                           *(ii) The checks shall conform to the*  
16 *applicable federal standards and shall include the taking of fingerprints.*

17                           *(iii) The Identification Bureau of the Department of*  
18 *Arkansas State Police may maintain these fingerprints in the automated*  
19 *fingerprint identification system.*

20                           ~~*(iv) The Federal Bureau of Investigation shall*~~  
21 ~~*promptly destroy the fingerprint card of the applicant.*~~

22           *(B) The person shall sign a release of information to the*  
23 *Department of Education. Unless the employing school district board of*  
24 *directors has taken action to pay for the cost of criminal background checks*  
25 *required by this section, the employment applicant shall be responsible for*  
26 *the payment of any fee associated with the criminal records checks.*

27           *(C)(i) The board of directors of a local school district*  
28 *created by consolidation, annexation, or detachment may waive the*  
29 *requirements under subdivisions (a)(1)(A) and (B) of this section for*  
30 *personnel who were employed by the affected district immediately prior to the*  
31 *annexation, consolidation, or detachment and who had complete criminal*  
32 *background checks conducted as a condition of the person's most recent*  
33 *employment with the affected district as required under this section.*

34                           *(ii) As used in this section, "affected district"*  
35 *means a school district that loses territory or students as a result of*  
36 *annexation, consolidation, or detachment.*

1           (2) Upon completion of the criminal records check, the  
 2 Identification Bureau of the Department of Arkansas State Police shall  
 3 forward all releasable information obtained concerning the person to the  
 4 Department of Education, which shall promptly inform the board of directors  
 5 of the local school district or education service cooperative whether or not  
 6 the applicant is eligible for employment as provided by subdivision (b)(1) of  
 7 this section.

8           (b) ~~No~~ Except as provided in subsection (f) of this section, no person  
 9 shall be eligible for employment by a local school district or education  
 10 service cooperative in a noncertified staff position if that person has  
 11 pleaded guilty or nolo contendere to or has been found guilty of any ~~of the~~  
 12 ~~following offenses~~ felony or Class A misdemeanor offense by any court in the  
 13 State of Arkansas or of any similar offense by a court in another state or of  
 14 any similar offense by a federal court+ or military court, regardless of  
 15 whether the record of the conviction is sealed or expunged or the conviction  
 16 is pardoned.

17           ~~(1) Capital murder as prohibited in § 5-10-101;~~

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

20           ~~(3) Manslaughter as prohibited in § 5-10-104;~~

21           ~~(4) Battery in the first degree as prohibited in § 5-13-201 and~~  
 22 ~~battery in the second degree as prohibited in § 5-13-202;~~

23           ~~(5) Aggravated assault as prohibited in § 5-13-204;~~

24           ~~(6) Terroristic threatening in the first degree as prohibited in~~  
 25 ~~§ 5-13-301;~~

26           ~~(7) Kidnapping as prohibited in § 5-11-102;~~

27           ~~(8) Rape as prohibited in § 5-14-103;~~

28           ~~(9) Sexual assault in the first degree, second degree, third~~  
 29 ~~degree, and fourth degree, as prohibited in § 5-14-124—5-14-127;~~

30           ~~(10) Incest as prohibited in § 5-26-202;~~

31           ~~(11) Engaging children in sexually explicit conduct for use in~~  
 32 ~~visual or print media, transportation of minors for prohibited sexual~~  
 33 ~~conduct, employing or consenting to the use of a child in a sexual~~  
 34 ~~performance, or producing, directing, or promoting a sexual performance by a~~  
 35 ~~child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

36           ~~(12) Distribution to minors as prohibited in § 5-64-406;~~

1           ~~(13) Any felony in violation of the Uniform Controlled~~  
2 ~~Substances Act, § 5-64-101 et seq.;~~

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

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

7           ~~(16) Endangering the welfare of a minor in the first degree as~~  
8 ~~prohibited in § 5-27-205;~~

9           ~~(17) Pandering or possessing visual or print medium depicting~~  
10 ~~sexually explicit conduct involving a child as prohibited by § 5-27-304;~~

11           ~~(18) False imprisonment in the first degree as prohibited in §~~  
12 ~~5-11-103;~~

13           ~~(19) Permanent detention or restraint as prohibited in § 5-11-~~  
14 ~~106;~~

15           ~~(20) Permitting abuse of a child as prohibited in § 5-27-~~  
16 ~~221(a)(1) and (3);~~

17           ~~(21) Negligent homicide as prohibited by § 5-10-105(a);~~

18           ~~(22) Assault in the first degree as prohibited by § 5-13-205;~~

19           ~~(23) Coercion as prohibited by § 5-13-208;~~

20           ~~(24) Public sexual indecency as prohibited by § 5-14-111;~~

21           ~~(25) Indecent exposure as prohibited by § 5-14-112;~~

22           ~~(26) Endangering the welfare of a minor in the second degree as~~  
23 ~~prohibited by § 5-27-206;~~

24           ~~(27) Computer child pornography as prohibited in § 5-27-603; and~~

25           ~~(28) Computer exploitation of a child in the first degree as~~  
26 ~~prohibited in § 5-27-605.~~

27           (c) However, the board of directors of a local school district or  
28 education service cooperative is authorized to offer provisional employment  
29 to an applicant pending receipt of eligibility information from the  
30 Department of Education.

31           (d)(1) Any information received by the Department of Education from  
32 the Identification Bureau of the Department of Arkansas State Police pursuant  
33 to this section shall not be available for examination except by the affected  
34 applicant for employment or his or her duly authorized representative, and no  
35 record, file, or document shall be removed from the custody of the Department  
36 of Education.

1 (2) Any information made available to the affected applicant for  
2 employment shall be information pertaining to that applicant only.

3 (3) Rights of privilege and confidentiality established under  
4 this section shall not extend to any document created for purposes other than  
5 this background check.

6 (e) As used in this section, "noncertified staff position" means any  
7 job that does not require the person to hold a license issued by the State  
8 Board of Education and is either a full-time job or a permanent part-time job  
9 or is a job as a substitute teacher for thirty (30) days or more during a  
10 school year.

11 (f)(1) The employment eligibility provisions of ~~subdivision (b)(1)~~  
12 subsection (b) of this section may be waived by the state board upon request  
13 by:

14 (A) The board of a local school district; or

15 (B) An affected applicant for employment.

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

18 (A) ~~The age at which the crime was committed~~ The nature  
19 and severity of the offense;

20 (B) ~~The circumstances surrounding the crime~~ The  
21 consequences of the offense;

22 (C) ~~The length of time since the crime~~ The number and  
23 frequency of offenses;

24 (D) ~~Subsequent work history~~ The relation between the crime  
25 and the health, safety, and welfare of persons served by the board of a local  
26 school district or education service cooperative, such as:

27 (i) The age and vulnerability of any victim of the  
28 offense;

29 (ii) The harm suffered by any victim; and

30 (iii) The similarity between any victim and persons  
31 served by the board of a local school district or education service  
32 cooperative;

33 (E) ~~Employment references~~ The time elapsed without a  
34 repeat of the same or similar offense;

35 (F) ~~Character references~~ Documentation of successful  
36 completion of training or rehabilitation concerning the offense; and

1                   (G) ~~Other evidence demonstrating that the applicant does~~  
2 ~~not pose a threat to the health or safety of school children or school~~  
3 ~~personnel~~ Any other relevant information.

4                   (3) No waiver shall be granted if the state board determines  
5 that the offense was a violent, physical, or sexual offense.

6                   (g) The state board may determine that an applicant for employment  
7 with a school district in a noncertified staff position is ineligible for  
8 employment if the applicant:

9                   (1) Has pleaded guilty or nolo contendere to or has been found  
10 guilty of a felony not listed in subsection (b) of this section;

11                   (2) Pleads guilty or nolo contendere to or has been found guilty  
12 in a court:

13                   (A) In this state of a nonfelony negligent homicide or a  
14 misdemeanor not listed in subsection (b) of this section and involving  
15 physical injury, mistreatment, or abuse against a child or against a  
16 household member of the licensee; or

17                   (B) In another state or in federal court of a crime  
18 similar to a nonfelony negligent homicide or a misdemeanor not listed in  
19 subsection (b) of this section and involving physical injury, mistreatment,  
20 or abuse against a child or against a household member of the licensee;

21                   (3) Is required to pass an examination as a requirement of his  
22 or her position and the applicant's completed examination test score was  
23 declared invalid because of the applicant's improper conduct;

24                   (4) Has an expunged or a pardoned conviction for any sexual or  
25 physical abuse offense committed against a child;

26                   (5) Knowingly submits or provides false or misleading  
27 information or knowingly fails to submit or provide information requested or  
28 required by law to the Department of Education, the state board, or the  
29 Division of Legislative Audit; or

30                   (6) Knowingly falsifies or directs another to falsify any grade  
31 given to a student, whether the grade was given for an individual assignment  
32 or examination or at the conclusion of a regular grading period.

33  
34                   SECTION 5. Arkansas Code § 6-17-421 is amended to read as follows:  
35                   6-17-421. Criminal records check for fraudulent acts.

36                   (a) For purposes of this section:

1           (1) "Applicant" means an individual who is applying for initial  
2 employment as a fiscal officer of a school district;

3           (2) "Fiscal officer" means any certified or noncertified  
4 employee of a school district or education service cooperative who has any  
5 right, duty, or responsibility to access funds of a school district in excess  
6 of five thousand dollars (\$5,000), specifically including, but not limited  
7 to, superintendents, fiscal officers, and bookkeepers; and

8           (3) "Fraudulent act" means an act:

9           (A) Performed willfully and with the specific intent to  
10 deceive or cheat for the purpose of either causing some financial loss to  
11 another or bringing about some financial gain to the actor; and

12           (B) For which the actor has pleaded guilty or nolo  
13 contendere to or has been found guilty by any court in this state, by a court  
14 in another state, or by a federal court.

15           (b)(1)(A) Upon making application for employment in a position as a  
16 fiscal officer of a school district, the board of directors of a school  
17 district shall require the employment applicant to authorize release to the  
18 Department of Education the results of statewide and nationwide criminal  
19 records checks by the Identification Bureau of the Arkansas State Police.

20           (B) Unless the employing school district's board of  
21 directors has taken action to pay for the cost of criminal background checks  
22 required by this section, the employment applicant shall be responsible for  
23 the payment of any fee associated with the criminal records check.

24           (2)(A) The criminal background check shall conform to the  
25 applicable federal standards and include the taking of the employment  
26 applicant's or currently employed fiscal officer's fingerprints.

27           (B) At the conclusion of the criminal records check  
28 required by this section, the Identification Bureau of the Department of  
29 Arkansas State Police may maintain the fingerprints in the automated  
30 fingerprint identification system.

31           (3)(A) Any information received by the Department of Education  
32 from the Identification Bureau of the Department of Arkansas State Police  
33 pursuant to this section shall not be available for examination except by the  
34 affected employment applicant or fiscal officer or his or her duly authorized  
35 representative, and no record, file, or document shall be removed from the  
36 custody of the Department of Education.

1 (B) Any information made available to the affected  
2 employment applicant or fiscal officer shall be information pertaining to  
3 that applicant only.

4 (C) Rights of privilege and confidentiality established  
5 under this section shall not extend to any document created for purposes  
6 other than the background check.

7 (4) The Department of Education shall promptly inform the board  
8 of directors of the local school district whether or not the affected  
9 employment applicant is eligible for employment as provided in this  
10 subsection.

11 (c)(1) ~~No~~ After an opportunity for a hearing before the State Board of  
12 Education upon reasonable notice in writing, no person shall be eligible for  
13 employment as a fiscal officer by a local school district if the results of  
14 the criminal records check released to the Department of Education by the  
15 applicant reveals that the applicant has pleaded guilty or nolo contendere to  
16 or has been found guilty of a fraudulent act but only after an opportunity  
17 for a hearing before the State Board of Education upon reasonable notice in  
18 writing any felony or Class A misdemeanor offense by any court in the State  
19 of Arkansas or of any similar offense by a court in another state or of any  
20 similar offense by a federal or military court, regardless of whether the  
21 record of the conviction is sealed or expunged or the conviction is pardoned.

22 (2) However, the board of directors of a local school district  
23 is authorized to offer provisional employment to the affected applicant  
24 pending receipt of eligibility information from the Department of Education.

25 (d)(1) The superintendent of each school district shall report to the  
26 state board the name of any fiscal officer who is currently employed or was  
27 employed during the two (2) previous school years by the local school  
28 district who has pleaded guilty or nolo contendere to or has been found  
29 guilty of ~~a fraudulent act~~ an offense under subdivision (c)(1) of this  
30 section.

31 (2) A superintendent who knowingly fails to report information  
32 as required by this subsection may be subject to sanctions imposed by the  
33 state board.

34 (e) A prosecuting attorney who prosecutes a person whom he or she  
35 knows is a school employee in a case in which the school employee has pleaded  
36 guilty or nolo contendere to or has been found guilty of ~~a fraudulent act~~ an

1 offense under subdivision (c)(1) of this section shall report the name of the  
 2 employee and the nature of the crime to the school district in which the  
 3 person is employed and to the state board.

4 (f) A fiscal officer who pleads guilty or nolo contendere to or has  
 5 been found guilty of ~~a fraudulent act~~ an offense under subdivision (c)(1) of  
 6 this section shall be dismissed from employment with the school district but  
 7 only after an opportunity for a hearing before the state board upon  
 8 reasonable notice in writing.

9 (g)(1) The state board shall be entitled to consider:

10 (A) ~~The age of the fiscal officer at the time the criminal~~  
 11 ~~act occurred~~ The nature and severity of the offense;

12 (B) ~~The length of time since the conviction~~ The  
 13 consequences of the offense;

14 (C) ~~Whether the fiscal officer has pleaded guilty or nolo~~  
 15 ~~contendere to or has been found guilty of any other criminal violation since~~  
 16 ~~the original conviction~~ The number and frequency of offenses;

17 (D) ~~Whether the original conviction was expunged or~~  
 18 ~~pardoned~~ The relation between the crime and the health, safety, and welfare  
 19 of persons served by the board of a local school district, such as:

20 (i) The age and vulnerability of any victim of the  
 21 offense;

22 (ii) The harm suffered by any victim; and

23 (iii) The similarity between any victim and persons  
 24 served by the board of a local school district; and

25 (E) ~~Any other relevant facts~~ The time elapsed without a  
 26 repeat of the same or similar offense;

27 (F) Documentation of successful completion of training or  
 28 rehabilitation concerning the offense; and

29 (G) Any other relevant information.

30 (2) The state board after conducting a hearing and issuing a  
 31 decision in writing may determine not to prevent the employment or not to  
 32 require the termination of employment of the fiscal officer as required in  
 33 subsections (c) and (f) of this section.

34  
 35 SECTION 6. Arkansas Code § 6-51-606(h), concerning the issuance or  
 36 revocation of a license issued by the State Board of Private Career

1 Education, is amended to read as follows:

2 (h) The board shall have the power to deny issuing a new or renewal  
3 license, to revoke an existing license, or to place a licensee on probation,  
4 if in its discretion it determines that:

5 (1) The licensee has violated any of the provisions of this  
6 subchapter or any of the rules and regulations of the board;

7 (2) The applicant or licensee has knowingly presented to the  
8 board incomplete or misleading information relating to licensure;

9 (3) The applicant or licensee has pleaded guilty, entered a plea  
10 of nolo contendere, or has been found guilty in a criminal proceeding,  
11 regardless of whether or not the adjudication of guilt or sentence is  
12 withheld, deferred, or suspended by a court of this state, another state, or  
13 the federal government of:

14 (A) Any felony or Class A misdemeanor; or

15 (B) Any act involving moral turpitude, gross immorality,  
16 or which is related to the qualifications, functions, and duties of a  
17 licensee;

18 (4) The applicant or licensee has intentionally failed or  
19 refused to permit the board or its representatives to inspect the school or  
20 classes or has intentionally failed or refused to make available to the  
21 board, at any time when requested to do so, full information pertaining to  
22 any or all items of information contained in an application for license or  
23 pertaining to the operation of the school;

24 (5) The applicant has failed or refused to submit to the board  
25 an application for license or renewal in the manner and on the forms  
26 prescribed;

27 (6) A licensed admissions representative has failed or refused  
28 to display or produce his or her license when requested to do so by  
29 prospective students or designated officials of the board;

30 (7) The applicant or licensee has failed to provide or maintain  
31 premises, equipment, materials, supplies, or conditions in accordance with  
32 minimum standards as established by rules and regulations;

33 (8) The licensee has been found by the board or a court of law  
34 to have perpetrated fraud or deceit in advertising of the school or programs  
35 of study or in presenting to prospective students information relating to the  
36 school, programs of study, employment opportunities, or opportunities for

1 enrollment in institutions of higher education;

2 (9) The licensee has in its employ admissions representatives  
3 who have not been licensed but are actively engaged in the practice of  
4 attempting to enroll students;

5 (10) The licensee has failed to provide and maintain standards  
6 of instruction or qualified administrative, supervisory, or instructional  
7 staff as established by rules and regulations;

8 (11) The applicant or licensee is unable to provide and maintain  
9 financial resources in sufficient amount to equip and maintain the school or  
10 classes;

11 (12) The licensee has moved the school into new premises or  
12 facilities without first notifying the director;

13 (13) The licensee has offered training or instruction in  
14 programs of study which have not been approved and authorized in accordance  
15 with rules and regulations;

16 (14) A licensed admissions representative has solicited  
17 prospective students to enroll in a school which has not been licensed by the  
18 board or which is not listed on his or her license;

19 (15) There was a change in the ownership of the school without  
20 proper notification to and approval from the board;

21 (16) The licensee has failed to notify the director or to  
22 provide written documentation as to the cause that the license of a school  
23 has been suspended or revoked or the school has been placed on probation or a  
24 show cause issued in another state or by another regulatory agency;

25 (17) The licensee has failed to notify the director of legal  
26 actions initiated by or against the school; or

27 (18) The licensee fails to make tuition refunds to the students  
28 or their lenders in compliance with current regulations.

29  
30 SECTION 7. Arkansas Code § 9-28-409 is amended to read as follows:  
31 9-28-409. Criminal record and child maltreatment checks.

32 (a)(1) Each of the following persons in a child welfare agency shall  
33 be checked with the child maltreatment central registry in his or her state  
34 of residence and any state of residence in which the person has lived for the  
35 past six (6) years and in the person's state of employment, if different, for  
36 reports of child maltreatment in compliance with policy and procedures

1 promulgated by the Child Welfare Agency Review Board:

2 (A) An employee having direct and unsupervised contact  
3 with children;

4 (B) A volunteer having direct and unsupervised contact  
5 with children;

6 (C) A foster parent and all household members age ten (10)  
7 years and older;

8 (D) An adoptive parent and all household members age ten  
9 (10) years and older;

10 (E) An owner having direct and unsupervised contact with  
11 children; and

12 (F) A member of the agency's board of directors having  
13 direct and unsupervised contact with children.

14 (2) The board shall have the authority to deny a license or  
15 church-operated exemption to any applicant found to have any record of  
16 founded child maltreatment in the official record of the registry.

17 (3)(A) Any person required to be checked under this section who  
18 is found to have any record of child maltreatment in the official record of  
19 the registry shall be reviewed by the owner or operator of the facility in  
20 consultation with the board to determine appropriate corrective action  
21 measures which would indicate, but are not limited to, training, probationary  
22 employment, or nonselection for employment.

23 (B) The board shall also have the authority to deny a  
24 license or church-operated exemption to an applicant who continues to employ  
25 a person with any record of founded child maltreatment.

26 (4) All persons required to be checked with the registry under  
27 this subsection shall repeat the check every two (2) years, except that  
28 adoptive parents who reside in Arkansas shall repeat the check every year  
29 pending court issuance of a final decree of adoption, at which point repeat  
30 checks shall no longer be required.

31 (b)(1) Each of the following persons in a child welfare agency who has  
32 lived in Arkansas continuously for six (6) years or more shall be checked  
33 with the Identification Bureau of the Department of Arkansas State Police for  
34 convictions of the offenses listed in this subchapter in compliance with  
35 policy and procedures promulgated by the board:

36 (A) An employee having direct and unsupervised contact

1 with children;

2 (B) A volunteer having direct and unsupervised contact  
3 with children;

4 (C) A foster parent and all household members age sixteen  
5 (16) years and older;

6 (D) An owner having direct and unsupervised contact with  
7 children; and

8 (E) A member of the agency's board of directors having  
9 direct and unsupervised contact with children.

10 (2)(A) The owner or operator of a child welfare agency shall  
11 maintain on file, subject to inspection by the board, evidence that  
12 Department of Arkansas State Police criminal records checks have been  
13 initiated on all persons required to be checked and the results of the  
14 checks.

15 (B) Failure to maintain that evidence on file will be  
16 prima facie grounds to revoke the license or church-operated exemption of the  
17 owner or operator of the child welfare agency.

18 (3) All persons required to be checked with the Department of  
19 Arkansas State Police under this subsection shall repeat the check every five  
20 (5) years, except that adoptive parents shall not repeat the check after  
21 court issuance of a final decree of adoption in the adoption case for which  
22 the check was obtained.

23 (4) Adoptive parents shall complete background checks as  
24 required by law.

25 (c)(1) In compliance with federal law and regulations and with policy  
26 and procedures promulgated by the board, each of the following persons in a  
27 child welfare agency who has not lived in Arkansas continuously for the past  
28 six (6) years shall be checked with the Federal Bureau of Investigation for  
29 convictions of the offenses listed in this subchapter:

30 (A) An employee having direct and unsupervised contact  
31 with children;

32 (B) A volunteer having direct and unsupervised contact  
33 with children;

34 (C) A foster parent and all family members age sixteen  
35 (16) years and older;

36 (D) An owner having direct and unsupervised contact with

1 children; and

2 (E) A member of the agency's board of directors having  
3 direct and unsupervised contact with children.

4 (2)(A) The owner or operator of a child welfare agency shall  
5 maintain on file, subject to inspection by the board, evidence that the  
6 Federal Bureau of Investigation's criminal records checks have been initiated  
7 on all persons required to be checked and the results of the checks.

8 (B) Failure to maintain that evidence on file will be  
9 prima facie grounds to revoke the license or church-operated exemption of the  
10 owner or operator of the child welfare agency.

11 (d)(1) Each person required to have a criminal records check under  
12 this subchapter shall complete a criminal records check form developed by the  
13 Department of Health and Human Services and shall sign the form that contains  
14 the following under oath before a notary public:

15 (A) Certification that the subject of the check consents  
16 to the completion of the check;

17 (B) Certification that the subject of the check has not  
18 been convicted of a crime and if the subject of the check has been convicted  
19 of a crime, contains a description of the crime and the particulars of the  
20 conviction;

21 (C) Notification that the subject of the check may  
22 challenge the accuracy and completeness of any information in any report and  
23 obtain a prompt determination as to the validity of the challenge before a  
24 final determination is made by the board with respect to his or her  
25 employment status or licensing status;

26 (D) Notification that the subject of the check may be  
27 denied a license or exemption to operate a child welfare agency or may be  
28 denied unsupervised access to children in the care of a child welfare agency  
29 due to information obtained by the check which indicates that the subject of  
30 the check has been convicted of, or is under pending indictment for, a crime  
31 listed in this subchapter; and

32 (E) Notification that any background check and the results  
33 thereof shall be handled in accordance with the requirements of Pub. L. No.  
34 92-544.

35 (2) The owner or operator of the child welfare agency shall  
36 submit the criminal records check form to the Identification Bureau for

1 processing within ten (10) days of hiring the employee, who shall remain  
2 under conditional employment until the registry check and criminal records  
3 checks required under this subchapter are completed.

4 (3) Nothing in this section shall be construed to prevent the  
5 board from denying a license or exemption to an owner or preventing an  
6 operator or employee in a child welfare agency from having unsupervised  
7 access to children by reason of the pending appeal of a criminal conviction  
8 or child maltreatment determination.

9 (4) In the event a legible set of fingerprints as determined by  
10 the Department of Arkansas State Police and the Federal Bureau of  
11 Investigation cannot be obtained after a minimum of three (3) attempts by  
12 qualified law enforcement personnel, the board shall determine eligibility  
13 based upon a name check by the Department of Arkansas State Police and the  
14 Federal Bureau of Investigation.

15 (5)(A) An owner or operator of a child welfare agency shall not  
16 be liable during a conditional period of service for hiring any person  
17 required to have a background check pursuant to this subchapter who may be  
18 subject to a charge of false swearing upon completion of central registry and  
19 criminal records check.

20 (B)(i) Pursuant to this subchapter, false swearing shall  
21 occur when a person while under oath provides false information or omits  
22 information that the person knew or reasonably should have known was  
23 material.

24 (ii) Lack of knowledge that information is material  
25 is not a defense to a charge of false swearing.

26 (C) For purposes of this subchapter, false swearing is a  
27 Class A misdemeanor.

28 (e)(1) Except as provided in subdivisions (d)(2) or ~~(h)(1)~~ (e)(2)(B)  
29 of this section, no person who is required to have a criminal check under  
30 subdivision (b)(1) or (c)(1) of this section shall be eligible to have direct  
31 and unsupervised contact with a child in the care of a child welfare agency  
32 if that person has pleaded guilty or nolo contendere to, or has been found  
33 guilty of, any ~~of the following offenses~~ felony or Class A misdemeanor  
34 offense by any court in the State of Arkansas or of any similar offense by a  
35 court in another state or of any similar offense by a federal court or  
36 military court unless the conviction was vacated or reversed, regardless of

1 whether the record of conviction is sealed or expunged or the conviction is  
2 pardoned.†

3 ~~(A) Capital murder as prohibited in § 5-10-101;~~

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

6 ~~(C) Manslaughter as prohibited in § 5-10-104;~~

7 ~~(D) Negligent homicide as prohibited in § 5-10-105;~~

8 ~~(E) Kidnapping as prohibited in § 5-11-102;~~

9 ~~(F) False imprisonment in the first degree and false~~  
10 ~~imprisonment in the second degree as prohibited in §§ 5-11-103 and 5-11-104;~~

11 ~~(G) Permanent detention or restraint as prohibited in § 5-~~  
12 ~~11-106;~~

13 ~~(H) Battery in the first degree, battery in the second~~  
14 ~~degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-~~  
15 ~~202, and 5-13-203;~~

16 ~~(I) Aggravated assault as prohibited in § 5-13-204;~~

17 ~~(J) Assault in the first degree and assault in the second~~  
18 ~~degree as prohibited in §§ 5-13-205 and 5-13-206;~~

19 ~~(K) Terroristic threatening in the first degree and~~  
20 ~~terroristic threatening in the second degree as prohibited in § 5-13-301(a)~~  
21 ~~and (b);~~

22 ~~(L) Any sexual offense as prohibited in § 5-14-101 et~~  
23 ~~seq.;~~

24 ~~(M) Permitting abuse of a child as prohibited in § 5-27-~~  
25 ~~221;~~

26 ~~(N) Endangering the welfare of a minor in the first degree~~  
27 ~~and endangering the welfare of a minor in the second degree as prohibited in~~  
28 ~~§§ 5-27-203 and 5-27-204;~~

29 ~~(O) Contributing to the delinquency of a minor as~~  
30 ~~prohibited in § 5-27-205;~~

31 ~~(P) Engaging children in sexually explicit conduct for use~~  
32 ~~in visual or print medium, transportation of minors for prohibited sexual~~  
33 ~~conduct, use of a child or consent to use of a child in sexual performance,~~  
34 ~~and producing, directing, or promoting sexual performance by a child as~~  
35 ~~prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

36 ~~(Q) Incest as prohibited in § 5-26-202;~~

1 ~~(R) Interference with visitation as prohibited in § 5-26-~~  
2 ~~501;~~

3 ~~(S) Interference with custody as prohibited in § 5-26-502;~~

4 ~~(T) Engaging in conduct with respect to controlled~~  
5 ~~substances as prohibited in § 5-64-401;~~

6 ~~(U) Distribution to minors as prohibited in § 5-64-406;~~

7 ~~(V) Public display of obscenity as prohibited in § 5-68-~~  
8 ~~205;~~

9 ~~(W) Prostitution as prohibited in § 5-70-102;~~

10 ~~(X) Promoting prostitution in the first degree, promoting~~  
11 ~~prostitution in the second degree, and promoting prostitution in the third~~  
12 ~~degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;~~

13 ~~(Y) Computer child pornography as prohibited in § 5-27-~~  
14 ~~603;~~

15 ~~(Z) Computer exploitation of a child in the first degree~~  
16 ~~as prohibited in § 5-27-605(a);~~

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

20 ~~(BB) Any felony or any misdemeanor involving violence,~~  
21 ~~threatened violence, or moral turpitude; and~~

22 ~~(CC) Any former or future law of this or any other state~~  
23 ~~or of the federal government which is substantially equivalent to one (1) of~~  
24 ~~the aforementioned offenses.~~

25 (2)(A) Any person who is required to have a criminal check under  
26 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo  
27 contendere to, or is found guilty of, any of the offenses listed described in  
28 subdivision (e)(1) of this section, regardless of whether the record of  
29 conviction is sealed or expunged or the conviction is pardoned unless the  
30 conviction is vacated or reversed, shall be absolutely disqualified to be an  
31 owner, operator, volunteer, foster parent, adoptive parent, member of an  
32 agency's board of directors, or employee in a child welfare agency during the  
33 period of his or her confinement, probation, or parole supervision.

34 ~~(B) Except as provided in subdivision (h)(1) of this~~  
35 ~~section, any~~ Any person who is required to have a criminal check under  
36 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo

1    *contendere to, or is found guilty of, any of the offenses ~~listed~~ described in*  
2    *subdivision (e)(1) of this section, unless the conviction is vacated or*  
3    *reversed, shall be presumed to be disqualified to be an owner, operator,*  
4    *volunteer, foster parent, adoptive parent, member of an agency's board of*  
5    *directors, or employee in a child welfare agency after the completion of his*  
6    *or her term of confinement, probation, or parole supervision. This*  
7    *presumption can be rebutted in the following manner:*

8                    (i)(a) *The applicant must petition the board to make*  
9    *a determination that the applicant does not pose a risk of harm to any*  
10 *person.*

11                   (b) *The applicant shall bear the burden of*  
12 *making such a showing; and*

13                   (ii) *The board in its discretion may permit an*  
14 *applicant to be an owner, operator, volunteer, foster parent, adoptive*  
15 *parent, member of an agency's board of directors, or an employee in a child*  
16 *welfare agency notwithstanding having been convicted of an offense listed in*  
17 *this section upon making a determination that the applicant does not pose a*  
18 *risk of harm to any person served by the facility. In making this*  
19 *determination, the board shall consider the following factors:*

20                           (a) *The nature and severity of the crime;*

21                           (b) *The consequences of the crime;*

22                           (c) *The number and frequency of crimes;*

23                           (d) *The relation between the crime and the*  
24 *health, safety, and welfare of any person, such as:*

25                                   (1) *The age and vulnerability of victims*  
26 *of the crime;*

27                                   (2) *The harm suffered by the victim; and*

28                                   (3) *The similarity between the victim*  
29 *and persons served by a child welfare agency;*

30                           (e) *The time elapsed without a repeat of the*  
31 *same or similar event;*

32                           (f) *Documentation of successful completion of*  
33 *training or rehabilitation pertinent to the incident; and*

34                           (g) *Any other information that bears on the*  
35 *applicant's ability to care for children or any other relevant information.*

36                   (C) *The board's decision to disqualify a person from being*

1 an owner, operator, volunteer, foster parent, adoptive parent, member of an  
2 agency's board of directors, or an employee in a child welfare agency under  
3 this section shall constitute the final administrative agency action and  
4 shall not be subject to review.

5 (f)(1) No foster child in the custody of the Department of Health and  
6 Human Services shall be placed in the home of any foster or adoptive parent  
7 if the criminal records check reveals a felony conviction for:

- 8 (A) Child abuse or neglect;
- 9 (B) Spousal abuse;
- 10 (C) A crime against children, including child pornography;

11 or

12 (D) A crime involving violence, including rape, sexual  
13 assault, or homicide, but not including other physical assault or battery.

14 (2) No foster child in the custody of another state agency who  
15 is placed in Arkansas shall be placed in any home if the criminal records  
16 check reveals a felony conviction of an adult in the home for:

- 17 (A) Child abuse or neglect;
- 18 (B) Spousal abuse;
- 19 (C) A crime against children, including child pornography;

20 or

21 (D) A crime involving violence, including rape, sexual  
22 assault, or homicide, but not including other physical assault or battery.

23 (g)(1) No foster child in the custody of the Department of Health and  
24 Human Services shall be placed in the home of any foster or adoptive parent  
25 if the criminal record check reveals a felony conviction for physical  
26 assault, battery, or a drug-related offense if the offense was committed  
27 within the past five (5) years.

28 (2) No foster child in the custody of another state agency who  
29 is placed in Arkansas shall be placed in any home if the criminal record  
30 check reveals a felony conviction of any adult in the home for physical  
31 assault, battery, or a drug-related offense if the offense was committed  
32 within the past five (5) years.

33 ~~(h)(1) For purposes of this section, an expunged record of a~~  
34 ~~conviction or plea of guilty or nolo contendere to an offense listed in~~  
35 ~~subdivision (e)(1) of this section shall not be considered a conviction,~~  
36 ~~guilty plea, or nolo contendere plea to the offense unless the offense is~~

1 ~~also listed in subdivision (h)(2) of this section.~~

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

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

6 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~  
 7 ~~and murder in the second degree as prohibited in § 5-10-103;~~

8 ~~(C) Kidnapping as prohibited in § 5-11-102;~~

9 ~~(D) Rape as prohibited in § 5-14-103;~~

10 ~~(E) Sexual assault in the first degree and second degree~~  
 11 ~~as prohibited in §§ 5-14-124 and 5-14-125;~~

12 ~~(F) Endangering the welfare of a minor in the first degree~~  
 13 ~~and endangering the welfare of a minor in the second degree as prohibited in~~  
 14 ~~§§ 5-27-203 and 5-27-204;~~

15 ~~(G) Incest as prohibited in § 5-26-202;~~

16 ~~(H) Arson as prohibited in § 5-38-301;~~

17 ~~(I) Endangering the welfare of incompetent person in the~~  
 18 ~~first degree as prohibited in § 5-27-201; and~~

19 ~~(J) Adult abuse that constitutes a felony as prohibited in~~  
 20 ~~§ 5-28-103.~~

21  
 22 SECTION 8. Arkansas Code § 17-1-103 is amended to read as follows:

23 17-1-103. Registration, certification, and licensing for criminal  
 24 offenders.

25 (a)(1) It is the policy of the State of Arkansas to encourage and  
 26 contribute to the rehabilitation of criminal offenders and to assist them in  
 27 the assumption of the responsibilities of citizenship.

28 (2) The public is best protected when offenders are given the  
 29 opportunity to secure employment or to engage in a meaningful trade,  
 30 occupation, or profession.

31 ~~(b)(1)(A) Subject to the provisions of subdivision (b)(2) of this~~  
 32 ~~section in determining eligibility under this section, a board, commission,~~  
 33 ~~department, or an agency may take into consideration conviction of certain~~  
 34 ~~crimes that have not been annulled, expunged, or pardoned.~~

35 ~~(B) However, such convictions shall not operate as an~~  
 36 ~~automatic bar to registration, certification, or licensing for any trade,~~

1 ~~profession, or occupation.~~

2 ~~(2) The following criminal records shall not be used,~~  
3 ~~distributed, or disseminated in connection with an application for a~~  
4 ~~registration, license, or certificate:~~

5 ~~(A) Records of arrest not followed by a valid felony~~  
6 ~~conviction by the courts;~~

7 ~~(B) Convictions that have been annulled or expunged or~~  
8 ~~pardoned by the Governor; and~~

9 ~~(C) Misdemeanor convictions, except misdemeanor sex~~  
10 ~~offenses and misdemeanors involving violence.~~

11 ~~(e) The board, commission, department, or agency shall state~~  
12 ~~explicitly in writing the reasons for a decision that prohibits the applicant~~  
13 ~~from practicing the trade, occupation, or profession if the decision is~~  
14 ~~based, in whole or in part, on conviction of a felony.~~

15 ~~(d) For the purposes of this section, completion of the following~~  
16 ~~shall be deemed prima facie evidence of sufficient rehabilitation:~~

17 ~~(1) Probation or parole supervision; and~~

18 ~~(2) A period of five (5) years after final discharge or release~~  
19 ~~from any term of imprisonment in the state penitentiary without any~~  
20 ~~subsequent conviction.~~

21 ~~(e) Any complaints concerning the violation of this section shall be~~  
22 ~~adjudicated in accordance with the procedure set forth in the Arkansas~~  
23 ~~Administrative Procedure Act, § 25-15-201 et seq., for administrative and~~  
24 ~~judicial review.~~

25 ~~(f)(1) This section shall apply to any board, commission, department,~~  
26 ~~agency, or any other body that deals in licensing or regulating a profession,~~  
27 ~~trade, or occupation in the State of Arkansas.~~

28 ~~(2) It shall be the duty of the Secretary of State to make this~~  
29 ~~section known to any board, commission, department, or agency affected by~~  
30 ~~this section.~~

31 ~~(g) This section shall not apply to teacher licensure or certification~~  
32 ~~or nursing licensure and certification as governed by §§ 6-17-410 and 17-87-~~  
33 ~~312 respectively.~~

34 ~~(b) Except as provided in this section, and §§ 17-42-315, 17-92-317,~~  
35 ~~and 17-95-307, no person who is required to have a criminal records~~  
36 ~~background check under this Title 17 shall be eligible to hold a position,~~

1 permit, or license if that person has pleaded guilty or nolo contendere to,  
2 or has been found guilty of, any felony or Class A misdemeanor offense by any  
3 court in the State of Arkansas or of any similar offense by a court in  
4 another state or of any similar offense by a federal or military court,  
5 regardless of whether the record of the conviction is sealed or expunged or  
6 the conviction is pardoned.

7 (c) The disqualification described in subsection (b) of this section  
8 may be waived by the following entities to allow a person to hold a position,  
9 permit, or license upon a determination that the person does not pose a risk  
10 of harm to any other person served by the person holding the position,  
11 permit, or license or any person served by the:

12 (1) Arkansas State Board of Public Accountancy under § 17-12-  
13 303;

14 (2) Auctioneer's Licensing Board under § 17-17-312;

15 (3) Professional Bail Bond Company and Professional Bail  
16 Bondsman Licensing Board under § 17-19-203;

17 (4) Arkansas Board of Examiners in Counseling under § 17-27-313;

18 (5) Arkansas Board of Private Investigators and Private Security  
19 Agencies under § 17-40-306;

20 (6) Arkansas State Board of Nursing under § 17-87-312;

21 (7) Arkansas Psychology Board under § 17-97-312; or

22 (8) Arkansas Social Work Licensing Board under § 17-103-307.

23 (d) In making a disqualification waiver determination under subsection  
24 (c) of this section, the following factors may be considered by an entity in  
25 the list in subsection (c) of this section:

26 (1) The nature and severity of the offense;

27 (2) The consequences of the offense;

28 (3) The number and frequency of offenses;

29 (4) The relation between the crime and the health, safety, and  
30 welfare of persons served by the entity in the list in subsection (c) of this  
31 section, such as:

32 (A) The age and vulnerability of any victim of the  
33 offense;

34 (B) The harm suffered by any victim; and

35 (C) The similarity between any victim and persons served  
36 by the entity in the list in subsection (c) of this section;

1           (5) The time elapsed without a repeat of the same or similar  
2 offense;

3           (6) Documentation of successful completion of training or  
4 rehabilitation concerning the offense; and

5           (7) Any other relevant information.

6           (e) The decision of an entity in the list in subsection (c) of this  
7 section to refuse to waive disqualification from holding a position, permit,  
8 or license under this section shall constitute the final administrative  
9 agency action and shall not be subject to review.

10  
11           SECTION 9. Arkansas Code § 17-12-303 is amended to read as follows:  
12           17-12-303. Criminal background check.

13           (a) The Arkansas State Board of Public Accountancy may require each  
14 applicant for a new or reinstated license as a certified public accountant,  
15 including reciprocity applicants, or public accountant to apply for or  
16 authorize the board to obtain state and national criminal background checks  
17 to be conducted by the Identification Bureau of the Department of Arkansas  
18 State Police and the Federal Bureau of Investigation.

19           (b) The criminal background checks shall conform to the applicable  
20 federal standards and shall include the taking of fingerprints.

21           (c) The applicant shall authorize the release of the criminal  
22 background checks to the board and shall be responsible for the payment of  
23 any fee associated with the criminal background checks.

24           (d) Upon completion of the criminal background checks, the  
25 Identification Bureau of the Department of Arkansas State Police shall  
26 forward to the board all information obtained concerning the commission by  
27 the applicant of any felony or Class A misdemeanor offense ~~listed in~~  
28 ~~subsection (e) of this section.~~

29           (e) Notwithstanding the provisions of § 17-12-301, a person convicted  
30 of a felony or ~~crime involving moral turpitude or dishonesty in any state or~~  
31 ~~federal court~~ Class A misdemeanor may not receive or hold a license as a  
32 certified public accountant or public accountant unless the board waives the  
33 disqualification under § 17-1-103.

34           ~~(f)(1) The provisions of subsection (e) of this section may be waived~~  
35 ~~by the board upon the request of:~~

36           ~~(A) An affected applicant for licensure or registration;~~

1 ~~of~~

2 ~~(B) The person holding a license or registration subject~~  
3 ~~to revocation.~~

4 ~~(2) Circumstances for which a waiver may be granted shall~~  
5 ~~include, but not be limited to:~~

6 ~~(A) The age at which the crime was committed;~~

7 ~~(B) The circumstances surrounding the crime;~~

8 ~~(C) The length of time since the crime;~~

9 ~~(D) Subsequent work history;~~

10 ~~(E) Employment references;~~

11 ~~(F) Character references;~~

12 ~~(G) A conviction or record that has been expunged; and~~

13 ~~(H) Other evidence demonstrating that the applicant does~~  
14 ~~not pose a threat to the public health, safety, or welfare.~~

15 ~~(g)(1)(f)(1)~~ Any information received by the board from the  
16 Identification Bureau of the Department of Arkansas State Police under this  
17 section is not available for examination except by:

18 (A) The affected applicant or the applicant's authorized  
19 representative; or

20 (B) The person whose license or registration is subject to  
21 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 (3) Only information pertaining to the person making the request  
25 may be made available to the affected applicant or the person whose license  
26 or registration is subject to revocation.

27 (4) Rights of privilege and confidentiality established in this  
28 section shall not extend to any document created for purposes other than the  
29 criminal background checks.

30 ~~(h)(g)~~ The board shall adopt rules and regulations to implement the  
31 provisions of this section.

32

33 SECTION 10. Arkansas Code § 17-17-312 is amended to read as follows:  
34 17-17-312. Criminal background checks.

35 (a) Beginning July 16, 2003, each first-time applicant for a license  
36 issued by the Auctioneer's Licensing Board and each applicant seeking

1 reinstatement of an expired license from the board shall be required to apply  
2 to the Identification Bureau of the Department of Arkansas State Police for a  
3 state and national criminal background check to be conducted by the Federal  
4 Bureau of Investigation.

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

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

10 (d) Upon completion of the criminal background check, the  
11 Identification Bureau of the Department of Arkansas State Police shall  
12 forward to the board all information obtained concerning the applicant in the  
13 commission of any felony or Class A misdemeanor offense ~~listed in subsection~~  
14 ~~(f) of this section.~~

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

18 (f) No person shall be eligible to receive or hold a license issued by  
19 the board if that person has pleaded guilty or nolo contendere to, or been  
20 found guilty of, any felony or Class A misdemeanor offense unless the board  
21 waives the disqualification under § 17-1-103. ~~of the following offenses by~~  
22 ~~any court in the State of Arkansas or of any similar offense by a court in~~  
23 ~~another state or of any similar offense by a federal court:~~

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

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

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

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

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

30 ~~(6) False imprisonment in the first degree, as prohibited in §~~  
31 ~~5-11-103;~~

32 ~~(7) Permanent detention or restraint, as prohibited in § 5-11-~~  
33 ~~106;~~

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

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

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

- 1 ~~(11) Aggravated assault, as prohibited in § 5-13-204;~~  
2 ~~(12) Introduction of a controlled substance into the body of~~  
3 ~~another person, as prohibited in § 5-13-210;~~  
4 ~~(13) Terroristic threatening in the first degree, as prohibited~~  
5 ~~in § 5-13-301;~~  
6 ~~(14) Rape, as prohibited in § 5-14-103;~~  
7 ~~(15) Sexual indecency with a child, as prohibited in § 5-14-110;~~  
8 ~~(16) Sexual assault in the first degree, second degree, third~~  
9 ~~degree, and fourth degree, as prohibited in §§ 5-14-124—5-14-127;~~  
10 ~~(17) Incest, as prohibited in § 5-26-202;~~  
11 ~~(18) Offenses against the family, as prohibited in §§ 5-26-303—~~  
12 ~~5-26-306;~~  
13 ~~(19) Endangering the welfare of an incompetent person in the~~  
14 ~~first degree, as prohibited in § 5-27-201;~~  
15 ~~(20) Endangering the welfare of a minor in the first degree, as~~  
16 ~~prohibited in § 5-27-203;~~  
17 ~~(21) Permitting the abuse of a child, as prohibited in § 5-27-~~  
18 ~~221(a)(1) and (3);~~  
19 ~~(22) Engaging children in sexually explicit conduct for use in~~  
20 ~~visual or print media, transportation of minors for prohibited sexual~~  
21 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
22 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
23 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
24 ~~performance by a child, as prohibited in §§ 5-27-303—5-27-305, 5-27-402,~~  
25 ~~and 5-27-403;~~  
26 ~~(23) Felony adult abuse, as prohibited in § 5-28-103;~~  
27 ~~(24) Theft of property, as prohibited in § 5-36-103;~~  
28 ~~(25) Theft by receiving, as prohibited in § 5-36-106;~~  
29 ~~(26) Arson, as prohibited in § 5-38-301;~~  
30 ~~(27) Burglary, as prohibited in § 5-39-201;~~  
31 ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
32 ~~§§ 5-64-101—5-64-608, as prohibited in § 5-64-401;~~  
33 ~~(29) Promotion of prostitution in the first degree, as~~  
34 ~~prohibited in § 5-70-104;~~  
35 ~~(30) Stalking, as prohibited in § 5-71-229; and~~  
36 ~~(31) Criminal attempt, criminal complicity, criminal~~

1 ~~solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,~~  
 2 ~~5-3-301, and 5-3-401, to commit any of the offenses listed in this~~  
 3 ~~subsection.~~

4 ~~(g)(1) The provisions of subsection (f) of this section may be waived~~  
 5 ~~by the board upon the request of:~~

6 ~~(A) An affected applicant for licensure; or~~

7 ~~(B) The person holding a license subject to revocation.~~

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

10 ~~(A) The age at which the crime was committed;~~

11 ~~(B) The circumstances surrounding the crime;~~

12 ~~(C) The length of time since the crime;~~

13 ~~(D) Subsequent work history;~~

14 ~~(E) Employment references; and~~

15 ~~(F) Character references.~~

16 ~~(h)(1)(g)(1)~~ Any information received by the board from the  
 17 Identification Bureau of the Department of Arkansas State Police under this  
 18 section shall not be available for examination except by the:

19 (A) Affected applicant for licensure, or his or her  
 20 authorized representative; or

21 (B) Person whose license is subject to revocation, or his  
 22 or her authorized representative.

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

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

28 ~~(j)(i)~~ Rights of privilege and confidentiality established under this  
 29 section shall not extend to any document created for purposes other than this  
 30 background check.

31 ~~(k)(j)~~ The board shall adopt the necessary rules and regulations to  
 32 fully implement the provisions of this section.

33  
 34 SECTION 11. Arkansas Code § 17-19-203 is amended to read as follows:  
 35 17-19-203. Character references.

36 (a) Each applicant for a professional bail bondsman license shall:

1           (1) File with the Professional Bail Bond Company and  
2 Professional Bail Bondsman Licensing Board written statements from at least  
3 three (3) persons who know his or her character;

4           (2)(A) Be required to apply to the Identification Bureau of the  
5 Department of Arkansas State Police for a state and nationwide criminal  
6 records check to be conducted by the Federal Bureau of Investigation.

7           (B) The criminal records check shall conform to the  
8 applicable federal standards and shall include the taking of fingerprints.

9           (C) The applicant shall sign a release of information to  
10 the board and shall be responsible to the Department of Arkansas State Police  
11 for the payment of any fee associated with the criminal records check.

12           (D) Upon completion of the criminal records check, the  
13 Identification Bureau of the Department of Arkansas State Police shall  
14 forward all information obtained concerning the applicant to the board.

15           (E) At the conclusion of the criminal background check  
16 required by this subdivision (2), the Identification Bureau of the Department  
17 of Arkansas State Police shall promptly destroy the fingerprint card of the  
18 applicant; and

19           (3) Such other proof as the board may require that he or she is  
20 competent, trustworthy, financially responsible, and of good personal and  
21 business reputation and has not been convicted of a felony or ~~any~~ Class A  
22 misdemeanor offense ~~involving moral turpitude~~.

23           (b) No person shall be eligible to receive or hold a license issued by  
24 the board if that person has pleaded guilty or nolo contendere to, or been  
25 found guilty of, a felony or Class A misdemeanor offense unless the board  
26 waives the disqualification under § 17-1-103.

27  
28           SECTION 12. Arkansas Code § 17-27-301(4), concerning the eligibility  
29 for a license as a licensed professional counselor, is amended to read as  
30 follows:

31           (4) The applicant has applied for a criminal background check  
32 and has not been found guilty of, or pleaded guilty or nolo contendere to,  
33 any of the offenses ~~listed~~ described in § 17-27-313(~~f~~) (e);

34  
35           SECTION 13. Arkansas Code § 17-27-309(b), concerning suspension or  
36 revocation of the license of a licensed professional counselor, is amended to

1 read as follows:

2 (b) The board shall revoke the license of any person who is found  
3 guilty of or pleads guilty or nolo contendere to any offense ~~listed~~ described  
4 in § 17-27-313(~~f~~) (e) unless the person requests and the board grants a  
5 waiver pursuant to ~~§ 17-27-313(h)~~ § 17-1-103.

6

7 SECTION 14. Arkansas Code § 17-27-313 is amended to read as follows:  
8 17-27-313. Criminal background checks.

9 (a) The Arkansas Board of Examiners in Counseling may require each  
10 applicant for license renewal and each first-time applicant for a license  
11 issued by the board to apply to the Identification Bureau of the Department  
12 of Arkansas State Police for a state and national criminal background check,  
13 to be conducted by the Identification Bureau of the Department of Arkansas  
14 State Police and the Federal Bureau of Investigation.

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

17 (c) The applicant shall sign a release of information to the board and  
18 shall be responsible for the payment of any fee associated with the criminal  
19 background check.

20 (d) Upon completion of the criminal background check, the  
21 Identification Bureau of the Department of Arkansas State Police shall  
22 forward to the board all releasable information obtained concerning the  
23 applicant.

24 (e) No person shall be eligible to receive or hold a license issued by  
25 the board if that person has pleaded guilty or nolo contendere to or been  
26 found guilty of a felony or Class A misdemeanor offense unless the board  
27 waives the disqualification under § 17-1-103. ~~any of the following offenses~~  
28 ~~by any court in the State of Arkansas or of any similar offense by a court in~~  
29 ~~another state or of any similar offense by a federal court:~~

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 § 5-~~

- 1 ~~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, and 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 media, transportation of minors for prohibited sexual~~  
27 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
28 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
29 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
30 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~  
31 ~~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 prohibited~~  
 4 ~~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, 5-~~  
 8 ~~3-301, and 5-3-401, to commit any of the offenses listed in this subsection;~~

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

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

12 (f)(1) The board may issue a six-month nonrenewable letter of  
 13 provisional eligibility for licensure to a first-time applicant pending the  
 14 results of the criminal background check.

15 (2) Upon receipt of information from the Identification Bureau  
 16 of the Department of Arkansas State Police that the person holding such a  
 17 letter of provisional licensure has pleaded guilty or nolo contendere to or  
 18 been found guilty of any offense listed in subsection (e) of this section,  
 19 the board shall immediately revoke the provisional license unless the board  
 20 waives the disqualification under § 17-1-103.

21 ~~(g)(1) The provisions of subsections (e) and (f) of this section may~~  
 22 ~~be waived by the board upon the request of:~~

23 ~~(A) An affected applicant for licensure; or~~

24 ~~(B) The person holding a license subject to revocation.~~

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

27 ~~(A) The age at which the crime was committed;~~

28 ~~(B) The circumstances surrounding the crime;~~

29 ~~(C) The length of time since the crime;~~

30 ~~(D) Subsequent work history;~~

31 ~~(E) Employment references;~~

32 ~~(F) Character references; and~~

33 ~~(G) Other evidence demonstrating that the applicant does~~  
 34 ~~not pose a threat to the health or safety of children.~~

35 ~~(h)(1)(g)(1)~~ Any information received by the board from the  
 36 Identification Bureau of the Department of Arkansas State Police pursuant to

1 this section shall not be available for examination except by:

2 (A) The affected applicant for licensure, or his or her  
3 authorized representative; or

4 (B) The person whose license is subject to revocation, or  
5 his or her authorized representative.

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

8 ~~(i)~~(h) Any information made available to the affected applicant for  
9 licensure or the person whose license is subject to revocation shall be  
10 information pertaining to that person only.

11 ~~(j)~~(i) Rights of privilege and confidentiality established under this  
12 section shall not extend to any document created for purposes other than this  
13 background check.

14 ~~(k)~~(j) The board shall adopt the necessary rules and regulations to  
15 fully implement the provisions of this section.

16

17 SECTION 15. Arkansas Code § 17-40-306 is amended to read as follows:  
18 17-40-306. License - Applicant qualifications.

19 (a) Unless the requirement is waived by the Arkansas Board of Private  
20 Investigators and Private Security Agencies, an applicant for a license or  
21 his or her manager must:

22 (1) Be at least twenty-one (21) years of age;

23 (2) Be a high school graduate or its equivalent if the applicant  
24 is a manager of an investigations company or an individual applying for an  
25 investigations company license;

26 (3) Not have been found guilty of or pleaded guilty or nolo  
27 contendere to any+ felony or Class A misdemeanor offense unless the board  
28 waives the disqualification under § 17-1-103;

29 ~~(A) Felony, Class A misdemeanor, crime involving an act of~~  
30 ~~violence, or any crime involving moral turpitude in any court in the State of~~  
31 ~~Arkansas for which a pardon has not been granted;~~

32 ~~(B) Felony, Class A misdemeanor or an offense of a~~  
33 ~~comparable level, crime involving an act of violence, or any crime involving~~  
34 ~~moral turpitude in any court in another state for which a pardon has not been~~  
35 ~~granted; or~~

36 ~~(C) Felony, Class A misdemeanor or an offense of a~~

1 ~~comparable level, crime involving an act of violence, or any crime involving~~  
2 ~~moral turpitude in a military or federal court for which a pardon has not~~  
3 ~~been granted;~~

4 (4) Not have been declared by any court of competent  
5 jurisdiction incompetent by reason of mental defect or disease and not have  
6 been restored;

7 (5) Not be suffering from habitual drunkenness or from narcotics  
8 addiction or dependence;

9 (6) Not have been discharged from the armed services of the  
10 United States under other than honorable conditions;

11 (7) Be of good moral character; and

12 (8) Be in compliance with any other reasonable qualifications  
13 that the board may fix by rule.

14 (b)(1) An applicant who applies for a license to engage in the  
15 business of an investigations company or his or her manager shall have:

16 (A) Two (2) consecutive years' experience prior to the  
17 date of the application in the investigative field as an agent, employee,  
18 manager, or owner of an investigations company;

19 (B) Been licensed under Acts 1965, No. 447 [repealed];

20 (C) Two (2) years' experience as a licensed bail bondsman  
21 and a baccalaureate degree from a four-year institution of higher education;  
22 or

23 (D) Satisfied such other requirements as may be set by the  
24 board.

25 (2) The experience of the applicant must be reviewed by the  
26 board and determined to be adequate to qualify the applicant to engage in the  
27 business of an investigations company.

28 (c) An applicant who applies for a license to engage in the business  
29 of a security services contractor or his or her manager shall have two (2)  
30 consecutive years' experience prior to the date of application in the  
31 security services field as an agent, employee, manager, or owner of a  
32 security services contractor company, or the applicant or his or her manager  
33 shall have been licensed under Acts 1973, No. 605 [repealed], or shall  
34 satisfy such other requirements as may be set by the board.

35  
36 SECTION 16. Arkansas Code § 17-42-315(f), concerning eligibility for a

1 license issued by the Arkansas Real Estate Commission, is amended to read as  
2 follows:

3 (f) Except as provided in subsection (g) of this section, a person  
4 shall not receive or hold a license issued by the commission if the person  
5 has been convicted of a felony or Class A misdemeanor offense or a crime  
6 involving moral turpitude, fraud, dishonesty, untruthfulness, or  
7 untrustworthiness, regardless of whether the record of the conviction is  
8 sealed or expunged or the conviction is pardoned.

9

10 SECTION 17. Arkansas Code § 17-87-309(b), concerning the issuance and  
11 revocation of a license issued by the Arkansas State Board of Nursing, is  
12 amended to read as follows:

13 (b) The board shall refuse to issue or shall revoke the license of any  
14 person who is found guilty of or pleads guilty or nolo contendere to any  
15 offense ~~listed in § 17-87-312(f)~~ described in § 17-87-312(e), unless the  
16 person requests and the board grants a waiver pursuant to ~~§ 17-87-312(h)~~ §  
17 17-1-103.

18

19 SECTION 18. Arkansas Code § 17-87-312 is amended to read as follows:  
20 17-87-312. Criminal background checks.

21 (a) Each first-time applicant for a license issued by the Arkansas  
22 State Board of Nursing shall apply to the Identification Bureau of the  
23 Department of Arkansas State Police for a state and national criminal  
24 background check, to be conducted by the Federal Bureau of Investigation.

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

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

30 (d) Upon completion of the criminal background check, the  
31 Identification Bureau of the Department of Arkansas State Police shall  
32 forward to the board all information obtained concerning the applicant in the  
33 commission of any offense listed in subsection (e) of this section.

34 (e) ~~Except as provided in subdivision (1)(1) of this section, no~~ No  
35 person shall be eligible to receive or hold a license issued by the board if  
36 that person has pleaded guilty or nolo contendere to or has been found guilty

1 of any felony or Class A misdemeanor offense unless the board waives the  
 2 disqualification under § 17-1-103. ~~of the following offenses by any court in~~  
 3 ~~the State of Arkansas or of any similar offense by a court in another state~~  
 4 ~~or of any similar offense by a federal court:~~

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

1 ~~visual or print media, transportation of minors for prohibited sexual~~  
 2 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
 3 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
 4 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
 5 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~  
 6 ~~5-27-403;~~

7 ~~(23) Felony adult abuse as prohibited in § 5-28-103;~~

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

9 ~~(25) Theft by receiving as prohibited in § 5-36-106;~~

10 ~~(26) Arson as prohibited in § 5-38-301;~~

11 ~~(27) Burglary as prohibited in § 5-39-201;~~

12 ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
 13 ~~§§ 5-64-101—5-64-608 as prohibited in § 5-64-401;~~

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

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

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

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

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

23 (f)(1)(A) The board may issue a nonrenewable temporary permit for  
 24 licensure to a first-time applicant pending the results of the criminal  
 25 background check.

26 (B) The permit shall be valid for no more than six (6)  
 27 months.

28 (2) ~~Except as provided in subdivision (1)(1) of this section,~~  
 29 ~~upon~~ Upon receipt of information from the Identification Bureau of the  
 30 Department of Arkansas State Police that the person holding the letter of  
 31 provisional licensure has pleaded guilty or nolo contendere to, or has been  
 32 found guilty of, any offense listed in subsection (e) of this section, the  
 33 board shall immediately revoke the provisional license unless the board  
 34 waives the disqualification under § 17-1-103.

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

1                   ~~(A) An affected applicant for licensure; or~~  
 2                   ~~(B) The person holding a license subject to revocation.~~  
 3                   ~~(2) Circumstances for which a waiver may be granted shall~~  
 4 ~~include, but not be limited to, the following:~~  
 5                   ~~(A) The age at which the crime was committed;~~  
 6                   ~~(B) The circumstances surrounding the crime;~~  
 7                   ~~(C) The length of time since the crime;~~  
 8                   ~~(D) Subsequent work history;~~  
 9                   ~~(E) Employment references;~~  
 10                   ~~(F) Character references; and~~  
 11                   ~~(G) Other evidence demonstrating that the applicant does~~  
 12 ~~not pose a threat to the health or safety of the public.~~

13                   ~~(h)(1)(g)(1)~~ Any information received by the board from the  
 14 Identification Bureau of the Department of Arkansas State Police pursuant to  
 15 this section shall not be available for examination except by:

16                   (A) The affected applicant for licensure or his or her  
 17 authorized representative; or

18                   (B) The person whose license is subject to revocation or  
 19 his or her authorized representative.

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

22                   ~~(i)(h)~~ Any information made available to the affected applicant for  
 23 licensure or the person whose license is subject to revocation shall be  
 24 information pertaining to that person only.

25                   ~~(j)(i)~~ Rights of privilege and confidentiality established in this  
 26 section shall not extend to any document created for purposes other than this  
 27 background check.

28                   ~~(k)(j)~~ The board shall adopt the necessary rules and regulations to  
 29 fully implement the provisions of this section.

30                   ~~(l)(1)~~ For purposes of this section, an expunged record of a  
 31 conviction or a plea of guilty or nolo contendere to an offense listed in  
 32 subsection (e) of this section shall not be considered a conviction, guilty  
 33 plea, or nolo contendere plea to the offense unless the offense is also  
 34 listed in subdivision (1)(2) of this section.

35                   ~~(2) Because of the serious nature of the offenses and the close~~  
 36 ~~relationship to the type of work that is to be performed, the following shall~~

1 ~~result in permanent disqualification:~~

2 ~~(A) Capital murder as prohibited in § 5-10-101;~~

3 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~

4 ~~and murder in the second degree as prohibited in § 5-10-103;~~

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

6 ~~(D) Rape as prohibited in § 5-14-103;~~

7 ~~(E) Sexual assault in the first degree as prohibited in §~~  
 8 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

9 ~~(F) Endangering the welfare of a minor in the first degree~~  
 10 ~~as prohibited in § 5-27-203 and endangering the welfare of a minor in the~~  
 11 ~~second degree as prohibited in § 5-27-204;~~

12 ~~(G) Incest as prohibited in § 5-26-202;~~

13 ~~(H) Arson as prohibited in § 5-38-301;~~

14 ~~(I) Endangering the welfare of an incompetent person in~~  
 15 ~~the first degree as prohibited in § 5-27-201; and~~

16 ~~(J) Adult abuse that constitutes a felony as prohibited in~~  
 17 ~~§ 5-28-103.~~

18  
 19 SECTION 19. Arkansas Code § 17-92-317(e), concerning eligibility for a  
 20 new intern or pharmacist license or a new or reinstated registration as a  
 21 pharmacy technician issued by the Arkansas State Board of Pharmacy, is  
 22 amended to read as follows:

23 (e) Notwithstanding the provisions of § 17-1-103, no person shall be  
 24 eligible to receive or hold an intern or pharmacist license or pharmacy  
 25 technician registration issued by the board if that person has pleaded guilty  
 26 or nolo contendere to, or has been found guilty of, any of the following  
 27 offenses, regardless of whether an adjudication of guilt or sentencing or  
 28 imposition of sentence is withheld, by any court in the State of Arkansas or  
 29 of any similar offense by a court in another state or of any similar offense  
 30 by a federal court or military court, regardless of whether the record of  
 31 conviction is sealed or expunged or the conviction is pardoned:

32 (1) Any felony or Class A misdemeanor;

33 (2) Any act involving moral turpitude, gross immorality,  
 34 dishonesty, or which is related to the qualifications, functions, and duties  
 35 of a person holding the license or registration; or

36 (3) Any violation of Arkansas pharmacy or drug law or

1 regulations, including, but not limited to, this chapter, ~~the Uniform~~  
2 ~~Controlled Substances Act, § 5-64-101 et seq.,~~ and the Food, Drug, and  
3 Cosmetic Act, § 20-56-201 et seq.

4  
5 SECTION 20. Arkansas Code § 17-95-307 is amended to read as follows:  
6 17-95-307. License eligibility.

7 No person shall be eligible to receive or hold a license to practice  
8 medicine or another health care profession issued by the Arkansas State  
9 Medical Board if the person has pleaded guilty or nolo contendere to or has  
10 been found guilty of either an infamous crime that would impact his or her  
11 ability to practice medicine in the State of Arkansas or a felony or Class A  
12 misdemeanor offense, regardless of whether the record of conviction has been  
13 sealed, or expunged, or the conviction is pardoned.

14  
15 SECTION 21. Arkansas Code § 17-97-310(b), concerning the issuance and  
16 revocation of a license issued by the Arkansas Psychology Board, is amended  
17 to read as follows:

18 (b) The board shall refuse to issue or revoke the license of any  
19 person who has been found guilty of or pleaded guilty or nolo contendere to  
20 any of the offenses ~~listed~~ described in § 17-97-312(f) unless the person  
21 requests and the board grants a waiver pursuant to ~~§ 17-97-312(h)~~ § 17-1-103.

22  
23 SECTION 22. Arkansas Code § 17-97-312 is amended to read as follows:  
24 17-97-312. Criminal background checks.

25 (a) Each first-time applicant for a license issued by the Arkansas  
26 Psychology Board shall be required to apply to the Identification Bureau of  
27 the Department of Arkansas State Police for a state and national criminal  
28 background check to be conducted by the Federal Bureau of Investigation.

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

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

34 (d) Upon completion of the criminal background check, the  
35 Identification Bureau of the Department of Arkansas State Police shall  
36 forward to the board all information obtained concerning the applicant in the

1 commission of any offense listed in subsection (f) of this section.

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

5 (f) ~~Except as provided in subdivision (m)(1) of this section, no~~ No  
6 person shall be eligible to receive or hold a license issued by the board if  
7 that person has pleaded guilty or nolo contendere to or been found guilty of  
8 any felony or Class A misdemeanor offense unless the board waives the  
9 disqualification under § 17-1-103. ~~of the following offenses by any court in~~  
10 ~~the State of Arkansas or of any similar offense by a court in another state~~  
11 ~~or of any similar offense by a federal court:~~

12 ~~(1) Capital murder as prohibited in § 5-10-101;~~

13 ~~(2) Murder in the first degree as prohibited in § 5-10-102 and~~  
14 ~~murder in the second degree as prohibited in § 5-10-103;~~

15 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

16 ~~(4) Negligent homicide as prohibited in § 5-10-105;~~

17 ~~(5) Kidnapping as prohibited in § 5-11-102;~~

18 ~~(6) False imprisonment in the first degree as prohibited in § 5-~~  
19 ~~11-103;~~

20 ~~(7) Permanent detention or restraint as prohibited in § 5-11-~~  
21 ~~106;~~

22 ~~(8) Robbery as prohibited in § 5-12-102;~~

23 ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~

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

25 ~~(11) Aggravated assault as prohibited in § 5-13-204;~~

26 ~~(12) Introduction of a controlled substance into the body of~~  
27 ~~another person as prohibited in § 5-13-210;~~

28 ~~(13) Terroristic threatening in the first degree as prohibited~~  
29 ~~in § 5-13-301;~~

30 ~~(14) Rape as prohibited in § 5-14-103;~~

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

32 ~~(16) Sexual assault in the first degree, second degree, third~~  
33 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

34 ~~(17) Incest as prohibited in § 5-26-202;~~

35 ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~  
36 ~~5-26-306;~~

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

3           ~~(20) Endangering the welfare of a minor in the first degree as~~  
4 ~~prohibited in § 5-27-203;~~

5           ~~(21) Permitting abuse of a child as prohibited in § 5-27-~~  
6 ~~221(a)(1) and (3);~~

7           ~~(22) Engaging children in sexually explicit conduct for use in~~  
8 ~~visual or print media, transportation of minors for prohibited sexual~~  
9 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
10 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
11 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
12 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~  
13 ~~5-27-403;~~

14           ~~(23) Felony adult abuse as prohibited in § 5-28-103;~~

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

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

17           ~~(26) Arson as prohibited in § 5-38-301;~~

18           ~~(27) Burglary as prohibited in § 5-39-201;~~

19           ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
20 ~~§§ 5-64-101—5-64-608 as prohibited in § 5-64-401;~~

21           ~~(29) Promotion of prostitution in the first degree as prohibited~~  
22 ~~in § 5-70-104;~~

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

24           ~~(31) Criminal attempt, criminal complicity, criminal~~  
25 ~~solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-~~  
26 ~~3-301, and 5-3-401, to commit any of the offenses listed in this subsection;~~

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

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

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) ~~Except as provided in subdivision (m)(1) of this section,~~  
34 ~~upon~~ Upon receipt of information from the Identification Bureau of the  
35 Department of Arkansas State Police that the person holding a letter of  
36 provisional licensure has pleaded guilty or nolo contendere to or been found

1 guilty of any offense ~~listed~~ described in subsection (f) of this section, the  
2 board shall immediately revoke the provisional license unless the board  
3 waives the disqualification under § 17-1-103.

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

6 ~~(A) An affected applicant for licensure; or~~

7 ~~(B) The person holding a license subject to revocation.~~

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

10 ~~(A) The age at which the crime was committed;~~

11 ~~(B) The circumstances surrounding the crime;~~

12 ~~(C) The length of time since the crime;~~

13 ~~(D) Subsequent work history;~~

14 ~~(E) Employment references;~~

15 ~~(F) Character references; and~~

16 ~~(G) Other evidence demonstrating that the applicant does~~  
17 ~~not pose a threat to the health or safety of children.~~

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

24 (2) No record, file, or document shall be removed from the  
25 custody of the department.

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

29 ~~(k)(j)~~ Rights of privilege and confidentiality established in this  
30 section shall not extend to any document created for purposes other than this  
31 background check.

32 ~~(l)(k)~~ The board shall adopt the necessary rules and regulations to  
33 fully implement the provisions of this section.

34 ~~(m)(l)~~ For purposes of this section, an expunged record of a  
35 conviction or plea of guilty of or nolo contendere to an offense listed in  
36 subsection (f) of this section shall not be considered a conviction, guilty

1 ~~plea, or nolo contendere plea to the offense unless the offense is also~~  
 2 ~~listed in subdivision (m)(2) of this section.~~

3 ~~(2) Because of the serious nature of the offenses and the close~~  
 4 ~~relationship to the type of work that is to be performed, the following shall~~  
 5 ~~result in permanent disqualification:~~

6 ~~(A) Capital murder as prohibited in § 5-10-101;~~

7 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~  
 8 ~~and murder in the second degree as prohibited in § 5-10-103;~~

9 ~~(C) Kidnapping as prohibited in § 5-11-102;~~

10 ~~(D) Rape as prohibited in § 5-14-103;~~

11 ~~(E) Sexual assault in the first degree as prohibited in §~~  
 12 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

13 ~~(F) Endangering the welfare of a minor in the first degree~~  
 14 ~~as prohibited in § 5-27-203 and endangering the welfare of a minor in the~~  
 15 ~~second degree as prohibited in § 5-27-204;~~

16 ~~(G) Incest as prohibited in § 5-26-202;~~

17 ~~(H) Arson as prohibited in § 5-38-301;~~

18 ~~(I) Endangering the welfare of an incompetent person in~~  
 19 ~~the first degree as prohibited in § 5-27-201; and~~

20 ~~(J) Adult abuse that constitutes a felony as prohibited in~~  
 21 ~~§ 5-28-103.~~

22  
 23 SECTION 23. Arkansas Code § 17-103-305(b), concerning the issuance and  
 24 revocation of a license issued by the Arkansas Social Work Licensing Board,  
 25 is amended to read as follows:

26 (b) The board shall refuse to issue or revoke the license of any  
 27 person who is found guilty of or pleads guilty or nolo contendere to any  
 28 offense ~~listed~~ described in § 17-103-307(f) unless the person requests and  
 29 the board grants a waiver pursuant to ~~§ 17-103-307(h)~~ § 17-1-103.

30  
 31 SECTION 24. Arkansas Code § 17-103-307 is amended to read as follows:  
 32 17-103-307. Criminal background checks.

33 (a) Each first-time applicant for a license issued by the Arkansas  
 34 Social Work Licensing Board shall be required to apply to the Identification  
 35 Bureau of the Department of Arkansas State Police for a state and national  
 36 criminal background check, to be conducted by the Federal Bureau of

1 Investigation.

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

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

7 (d) Upon completion of the criminal background check, the  
8 Identification Bureau of the Department of Arkansas State Police shall  
9 forward to the board all information obtained concerning the applicant in the  
10 commission of any offense listed in subsection (f) of this section.

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

14 (f) ~~Except as provided in subdivision (m)(1) of this section, no~~ No  
15 person shall be eligible to receive or hold a license issued by the board if  
16 that person has pleaded guilty or nolo contendere to or been found guilty of  
17 any felony or Class A misdemeanor offense unless the board waives the  
18 disqualification under § 17-1-103. ~~of the following offenses by any court in~~  
19 ~~the State of Arkansas or of any similar offense by a court in another state~~  
20 ~~or of any similar offense by a federal court:~~

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

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

24 ~~(3) Manslaughter as prohibited in § 5-10-104;~~

25 ~~(4) Negligent homicide as prohibited in § 5-10-105;~~

26 ~~(5) Kidnapping as prohibited in § 5-11-102;~~

27 ~~(6) False imprisonment in the first degree as prohibited in § 5-~~  
28 ~~11-103;~~

29 ~~(7) Permanent detention or restraint as prohibited in § 5-11-~~  
30 ~~106;~~

31 ~~(8) Robbery as prohibited in § 5-12-102;~~

32 ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~

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

34 ~~(11) Aggravated assault as prohibited in § 5-13-204;~~

35 ~~(12) Introduction of a controlled substance into the body of~~  
36 ~~another person as prohibited in § 5-13-210;~~

1           ~~(13) Terroristic threatening in the first degree as prohibited~~  
2 ~~in § 5-13-301;~~

3           ~~(14) Rape as prohibited in § 5-14-103;~~

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

5           ~~(16) Sexual assault in the first degree, second degree, third~~  
6 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

7           ~~(17) Incest as prohibited in § 5-26-202;~~

8           ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~  
9 ~~5-26-306;~~

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

12           ~~(20) Endangering the welfare of a minor in the first degree as~~  
13 ~~prohibited in § 5-27-203;~~

14           ~~(21) Permitting abuse of a child as prohibited in § 5-27-~~  
15 ~~221(a)(1) and (3);~~

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

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

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

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

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

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

28           ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
29 ~~§§ 5-64-101—5-64-608, as prohibited in § 5-64-401;~~

30           ~~(29) Promotion of prostitution in the first degree as prohibited~~  
31 ~~in § 5-70-104;~~

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

33           ~~(31) Criminal attempt, criminal complicity, criminal~~  
34 ~~solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-~~  
35 ~~3-301, and 5-3-401, to commit any of the offenses listed in this subsection;~~

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

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

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

6 (2) ~~Except as provided in subdivision (m)(1) of this section,~~  
 7 ~~upon~~ Upon receipt of information from the Identification Bureau of the  
 8 Department of Arkansas State Police that the person holding such a letter of  
 9 provisional licensure has pleaded guilty or nolo contendere to or been found  
 10 guilty of any offense ~~listed~~ described in subsection (f) of this section, the  
 11 board shall immediately revoke the provisional license unless the board  
 12 waives the disqualification under § 17-1-103.

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

15 ~~(A) An affected applicant for licensure; or~~

16 ~~(B) The person holding a license subject to revocation.~~

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

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

20 ~~(B) The circumstances surrounding the crime;~~

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

22 ~~(D) Subsequent work history;~~

23 ~~(E) Employment references;~~

24 ~~(F) Character references; and~~

25 ~~(G) Other evidence demonstrating that the applicant does~~  
 26 ~~not pose a threat to the health or safety of children.~~

27 ~~(i)~~ (h) Any information received by the board from the Identification  
 28 Bureau of the Department of Arkansas State Police pursuant to this section  
 29 shall not be available for examination except by the affected applicant for  
 30 licensure or his or her authorized representative or the person whose license  
 31 is subject to revocation or his or her authorized representative. No record,  
 32 file, or document shall be removed from the custody of the department.

33 ~~(j)~~ (i) Any information made available to the affected applicant for  
 34 licensure or the person whose license is subject to revocation shall be  
 35 information pertaining to that person only.

36 ~~(k)~~ (j) Rights of privilege and confidentiality established in this

1 section shall not extend to any document created for purposes other than this  
2 background check.

3 ~~(l)(k)~~ The board shall adopt the necessary rules and regulations to  
4 fully implement the provisions of this section.

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

10 ~~(2)~~ Because of the serious nature of the offenses and the close  
11 relationship to the type of work that is to be performed, the following shall  
12 result in permanent disqualification:

- 13 ~~(A)~~ Capital murder as prohibited in § 5-10-101;  
14 ~~(B)~~ Murder in the first degree as prohibited in § 5-10-102  
15 and murder in the second degree as prohibited in § 5-10-103;  
16 ~~(C)~~ Kidnapping as prohibited in § 5-11-102;  
17 ~~(D)~~ Rape as prohibited in § 5-14-103;  
18 ~~(E)~~ Sexual assault in the first degree as prohibited in §  
19 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;  
20 ~~(F)~~ Endangering the welfare of a minor in the first degree  
21 as prohibited in § 5-27-203 and endangering the welfare of a minor in the  
22 second degree as prohibited in § 5-27-204;  
23 ~~(G)~~ Incest as prohibited in § 5-26-202;  
24 ~~(H)~~ Arson as prohibited in § 5-38-301;  
25 ~~(I)~~ Endangering the welfare of an incompetent person in  
26 the first degree as prohibited in § 5-27-201; and  
27 ~~(J)~~ Adult abuse that constitutes a felony as prohibited in  
28 § 5-28-103.

29  
30 SECTION 25. Arkansas Code § 20-13-1106 is amended to read as follows:  
31 20-13-1106. Disqualifying offenses - Waiver.

32 (a) Except as provided in ~~subdivision (e)(1)~~ subsection (b) of this  
33 section, the Division of EMS and Trauma Systems of the Division of Health of  
34 the Department of Health and Human Services shall issue a determination that  
35 a person is disqualified from certification or recertification if the person  
36 has been found guilty of or has pleaded guilty or nolo contendere to any ~~of~~

1 ~~the offenses listed in subsection (b) of this section, including offenses for~~  
 2 ~~which the record has been expunged felony or Class A misdemeanor offense in~~  
 3 ~~any court in the State of Arkansas or of any similar offense in a court of~~  
 4 ~~another state or of any similar offense in a federal court or military court,~~  
 5 ~~regardless of whether the record of conviction is sealed or expunged or the~~  
 6 ~~conviction is pardoned.~~ However, the Division of EMS and Trauma Systems  
 7 shall forward a request for a waiver to the Director of the Division of  
 8 Health of the Department of Health and Human Services on all applicants who  
 9 have been convicted of ~~the crimes listed in subsection (b) of this section~~  
 10 ~~any felony or Class A misdemeanor offense~~ if five (5) years have passed since  
 11 the conviction, if five (5) years have passed since release from custodial  
 12 confinement, or if the applicants are currently certified emergency medical  
 13 technicians, prior to making the final determination on certification or  
 14 recertification. These individuals will not be suspended prior to the  
 15 director's making the final determination.

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

1 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~  
2 ~~(17) Incest as prohibited in § 5-26-202;~~  
3 ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~  
4 ~~5-26-306;~~  
5 ~~(19) Endangering the welfare of an incompetent person in the~~  
6 ~~first degree as prohibited in § 5-27-201;~~  
7 ~~(20) Endangering the welfare of a minor in the first degree as~~  
8 ~~prohibited in § 5-27-203;~~  
9 ~~(21) Permitting child abuse as prohibited in § 5-27-221(a)(1)~~  
10 ~~and (3);~~  
11 ~~(22) Engaging children in sexually explicit conduct for use in~~  
12 ~~visual or print media, transportation of minors for prohibited sexual~~  
13 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
14 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
15 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
16 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~  
17 ~~5-27-403;~~  
18 ~~(23) Felony adult abuse as prohibited in § 5-28-103;~~  
19 ~~(24) Theft of property as prohibited in § 5-36-103;~~  
20 ~~(25) Theft by receiving as prohibited in § 5-36-106;~~  
21 ~~(26) Arson as prohibited in § 5-38-301;~~  
22 ~~(27) Burglary as prohibited in § 5-39-201;~~  
23 ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
24 ~~§ 5-64-101—5-64-608, as prohibited in § 5-64-401;~~  
25 ~~(29) Promotion of prostitution in the first degree as prohibited~~  
26 ~~in § 5-70-104;~~  
27 ~~(30) Stalking as prohibited in § 5-71-229;~~  
28 ~~(31) Criminal attempt, criminal complicity, criminal~~  
29 ~~solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-~~  
30 ~~3-301, and 5-3-401 to commit any of the offenses listed in this subsection;~~  
31 ~~(32) Fourth or subsequent driving while intoxicated violations~~  
32 ~~that constitute felony offenses under § 5-65-111(b)(3) and (4);~~  
33 ~~(33) Computer child pornography as prohibited in § 5-27-603; and~~  
34 ~~(34) Computer exploitation of a child in the first degree as~~  
35 ~~prohibited in § 5-27-605.~~  
36 ~~(e)(b) An applicant shall not be disqualified from certification or~~

1    *recertification when the applicant has been found guilty of or has pleaded*  
2    *guilty or nolo contendere to a misdemeanor if the offense:*

3           (1) *Did not involve exploitation of an adult, abuse of a person,*  
4    *neglect of a person, or sexual contact; or*

5           (2) *Was not committed while performing the duties of an*  
6    *emergency medical technician.*

7           ~~(d)(1)(c)(1)~~ *The provisions of this section may be waived by the*  
8    *Department of Health and Human Services upon written request by the person*  
9    *who is the subject of the criminal history check.*

10          (2) *The written request for waiver shall be mailed to the*  
11    *director within fifteen (15) calendar days after receipt of the determination*  
12    *by the Division of Health of the Department of Health and Human Services.*

13          (3) *Factors to be considered before granting a waiver shall*  
14    *include, but not be limited to:*

15               (A) *The age at which the crime was committed;*

16               (B) *The circumstances surrounding the crime;*

17               (C) *The length of time since the adjudication of guilt;*

18               (D) *The person's subsequent work history;*

19               (E) *The person's employment references;*

20               (F) *The person's character references; and*

21               (G) *Any other evidence demonstrating that the person does*  
22    *not pose a threat to the health or safety of persons to be cared for.*

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

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

31               ~~(A) Capital murder as prohibited in § 5-10-101;~~

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

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

35               ~~(D) Rape as prohibited in § 5-14-103;~~

36               ~~(E) Sexual assault in the first degree as prohibited in §~~

1 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~  
 2 ~~(F) Endangering the welfare of a minor in the first degree~~  
 3 ~~as prohibited in § 5-27-203 and endangering the welfare of a minor in the~~  
 4 ~~second degree as prohibited in § 5-27-204;~~  
 5 ~~(G) Incest as prohibited in § 5-26-202;~~  
 6 ~~(H) Arson as prohibited in § 5-38-301;~~  
 7 ~~(I) Endangering the welfare of an incompetent person in~~  
 8 ~~the first degree as prohibited in § 5-27-201; and~~  
 9 ~~(J) Adult abuse that constitutes a felony as prohibited in~~  
 10 ~~§ 5-28-103.~~

11  
 12 SECTION 26. Arkansas Code § 20-13-1111 is amended to read as follows:  
 13 20-13-1111. Notice of convictions.

14 An Arkansas-certified emergency medical technician shall notify the  
 15 Division of EMS and Trauma Systems of the Division of Health of the  
 16 Department of Health and Human Services of any conviction of or plea of  
 17 guilty or nolo contendere to any offenses ~~listed in § 20-13-1106(b)~~ described  
 18 in § 20-13-1106(a) within ten (10) calendar days after the conviction or  
 19 guilty plea or plea of nolo contendere.

20  
 21 SECTION 27. Arkansas Code § 20-33-205 is amended to read as follows:  
 22 20-33-205. Provisional licenses - Disqualification from employment -  
 23 Resubmission of applications - Denial or revocation - Penalties.

24 (a) Except as provided in subsection ~~(e)~~, ~~subsection (d)~~, ~~or~~  
 25 ~~subsection (f)~~ (b) of this section:

26 (1) A licensing agency shall issue a forty-five-day provisional  
 27 license to a qualified entity whose operator has been found guilty or has  
 28 pleaded guilty or nolo contendere to any of the offenses listed in subsection  
 29 (b) of this section;

30 (2) A licensing agency shall issue a determination that a person  
 31 is disqualified from employment with a qualified entity if the person has  
 32 been found guilty or pleaded guilty or nolo contendere to any of the offenses  
 33 listed in subsection (b) of this section; and

34 (3)(A) A qualified entity shall not knowingly employ a person  
 35 who has pleaded guilty or nolo contendere to or has been found guilty of any  
 36 of the offenses listed in subsection (b) of this section by any court in the

1 State of Arkansas or of any similar offense by a court in another state or of  
2 any similar offense by a federal court.

3 (B) Except as provided in subsection ~~(e)~~, ~~subsection (d)~~,  
4 ~~or subsection (f)~~ (b) of this section~~;~~.

5 ~~(i)~~—A a licensing agency shall issue a forty-five-  
6 day provisional license to a qualified entity whose operator has been found  
7 guilty of or pleaded guilty or nolo contendere to any of the offenses listed  
8 in subsection (b) of this section~~; and~~.

9 ~~(ii)~~—A licensing agency shall issue a determination  
10 that a person is disqualified from employment with a qualified entity if the  
11 person has been found guilty of or pleaded guilty or nolo contendere to any  
12 of the offenses listed in subsection (b) of this section. A requesting  
13 agency shall issue a determination that a person or ElderChoices provider is  
14 disqualified from providing care to the elderly or to an individual with a  
15 disability, or both, if the person or provider has been found guilty of or  
16 pleaded guilty or nolo contendere to any of the offenses listed in subsection  
17 ~~(b) of this section.~~

18 ~~(b)(1)~~—Capital murder as prohibited in § 5-10-101~~;~~

19 ~~(2)~~—Murder in the first degree as prohibited in § 5-10-102 and  
20 murder in the second degree as prohibited in § 5-10-103~~;~~

21 ~~(3)~~—Manslaughter as prohibited in § 5-10-104~~;~~

22 ~~(4)~~—Negligent homicide as prohibited in § 5-10-105~~;~~

23 ~~(5)~~—Kidnapping as prohibited in § 5-11-102~~;~~

24 ~~(6)~~—False imprisonment in the first degree as prohibited in § 5-  
25 11-103~~;~~

26 ~~(7)~~—Permanent detention or restraint as prohibited in § 5-11-  
27 106~~;~~

28 ~~(8)~~—Robbery as prohibited in § 5-12-102~~;~~

29 ~~(9)~~—Aggravated robbery as prohibited in § 5-12-103~~;~~

30 ~~(10)~~—Battery as prohibited in §§ 5-13-201—5-13-203~~;~~

31 ~~(11)~~—Aggravated assault as prohibited in § 5-13-204~~;~~

32 ~~(12)~~—Introduction of controlled substance into the body of  
33 another person as prohibited in § 5-13-210~~;~~

34 ~~(13)~~—Terroristic threatening in the first degree as prohibited  
35 in § 5-13-301(a)~~;~~

36 ~~(14)~~—Rape as prohibited in § 5-14-103~~;~~

- 1           ~~(15) Sexual indecency with a child as prohibited in § 5-14-110;~~  
2           ~~(16) Sexual assault in the first degree, second degree, third~~  
3 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~  
4           ~~(17) Incest as prohibited in § 5-26-202;~~  
5           ~~(18) Offenses against the family as prohibited in §§ 5-26-303—~~  
6 ~~5-26-306;~~  
7           ~~(19) Endangering the welfare of an incompetent person in the~~  
8 ~~first degree as prohibited in § 5-27-201;~~  
9           ~~(20) Endangering the welfare of a minor in the first degree as~~  
10 ~~prohibited in § 5-27-203;~~  
11           ~~(21) Permitting child abuse as prohibited in § 5-27-221(a)(1)~~  
12 ~~and (3);~~  
13           ~~(22) Engaging children in sexually explicit conduct for use in~~  
14 ~~visual or print media, transportation of minors for prohibited sexual~~  
15 ~~conduct, pandering or possessing visual or print medium depicting sexually~~  
16 ~~explicit conduct involving a child, or use of a child or consent to use of a~~  
17 ~~child in a sexual performance by producing, directing, or promoting a sexual~~  
18 ~~performance by a child as prohibited in §§ 5-27-303—5-27-305, 5-27-402, and~~  
19 ~~5-27-403;~~  
20           ~~(23) Felony adult abuse as prohibited by § 5-28-103;~~  
21           ~~(24) Theft of property as prohibited in § 5-36-103;~~  
22           ~~(25) Theft by receiving as prohibited in § 5-36-106;~~  
23           ~~(26) Arson as prohibited in § 5-38-301;~~  
24           ~~(27) Burglary as prohibited in § 5-39-201;~~  
25           ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
26 ~~§ 5-64-101—§ 5-64-608, as prohibited in § 5-64-401;~~  
27           ~~(29) Promotion of prostitution in the first degree as prohibited~~  
28 ~~in § 5-70-104;~~  
29           ~~(30) Stalking as prohibited in § 5-71-229;~~  
30           ~~(31) Criminal attempt, criminal complicity, criminal~~  
31 ~~solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-~~  
32 ~~3-301, and 5-3-401 to commit any of the offenses listed in this subsection;~~  
33           ~~(32) Forgery as prohibited in § 5-37-201;~~  
34           ~~(33) Breaking or entering as prohibited in § 5-39-202;~~  
35           ~~(34) Obtaining a controlled substance by fraud as prohibited in~~  
36 ~~§ 5-64-403;~~

1           ~~(35) Computer child pornography as prohibited in § 5-27-603; and~~  
2           ~~(36) Computer exploitation of a child in the first degree as~~  
3 ~~prohibited in § 5-27-605.~~

4           ~~(c) A qualified entity that is issued a provisional license based on~~  
5 ~~the criminal history of the operator may resubmit the application for~~  
6 ~~licensure with a new operator. If the qualified entity does not resubmit the~~  
7 ~~application within fifteen (15) days of the issuance of the provisional~~  
8 ~~license, then the qualified entity's license shall be immediately denied or~~  
9 ~~revoked.~~

10          ~~(d)(1) The provisions of this section shall not be waived by the~~  
11 ~~licensing or requesting agency.~~

12           ~~(2)(A) Except as provided in subdivision (d)(2)(B) of this~~  
13 ~~section, a conviction or plea of guilty or nolo contendere for a felony or~~  
14  ~~misdemeanor offense listed in subsection (b) of this section shall not~~  
15 ~~disqualify an applicant for employment if the date of conviction of the~~  
16 ~~offense is at least ten (10) years from the date of the application and the~~  
17 ~~individual has no criminal convictions of any type or nature during the ten-~~  
18  ~~year period.~~

19           ~~(B) Because of the serious nature of the offenses and the~~  
20 ~~close relationship to the type of work that is to be performed, the following~~  
21 ~~shall result in permanent disqualification of employment:~~

22                   ~~(i) Capital murder as prohibited in § 5-10-101;~~

23                   ~~(ii) Murder in the first degree as prohibited in §~~  
24 ~~5-10-102 and murder in the second degree as prohibited in § 5-10-103;~~

25                   ~~(iii) Kidnapping as prohibited in § 5-11-102;~~

26                   ~~(iv) Rape as prohibited in § 5-14-103;~~

27                   ~~(v) Sexual assault in the first degree as prohibited~~  
28 ~~in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-~~  
29 ~~14-125;~~

30                   ~~(vi) Endangering the welfare of an incompetent~~  
31 ~~person in the first degree as prohibited in § 5-27-201;~~

32                   ~~(vii) Felony adult abuse as prohibited by § 5-28-~~  
33 ~~103; and~~

34                   ~~(viii) Arson as prohibited in § 5-38-301.~~

35          (b)(1) Except as provided in subsections (c) and (e) of this section,  
36 no person who is required to have a criminal records background check under

1 this section shall be eligible to hold a position, provisional license, or  
2 license if that person has pleaded guilty or nolo contendere to, or has been  
3 found guilty of, any felony or Class A misdemeanor offense by any court in  
4 the State of Arkansas or of any similar offense by a court in another state  
5 or of any similar offense by a federal or military court, regardless of  
6 whether the record of the conviction is sealed or expunged or the conviction  
7 is pardoned.

8 (2)(A) Except as provided in subsections (c) and (e) of this  
9 section, a licensing agency shall issue a determination that a person is  
10 disqualified from employment with a qualified entity if the person has been  
11 found guilty of or pleaded guilty or nolo contendere to any felony or Class  
12 A misdemeanor offense, regardless of whether the record of the conviction is  
13 sealed or expunged or the conviction is pardoned.

14 (B) Except as provided in subsections (c) and (e) of this  
15 section, a requesting agency shall issue a determination that a person or  
16 ElderChoices provider is disqualified from providing care to the elderly or  
17 to an individual with a disability, or both, if the person or provider has  
18 been found guilty of or pleaded guilty or nolo contendere to any felony or  
19 Class A misdemeanor offense, regardless of whether the record of the  
20 conviction is sealed or expunged or the conviction is pardoned.

21 (c)(1) The licensing agency or requesting agency may waive the  
22 disqualification described in subsection (b) of this section and allow a  
23 person to hold a position, provisional license, or license upon making a  
24 determination that the person does not pose a risk of harm to any other  
25 person served by the licensing agency or requesting agency or persons to be  
26 served by the person holding the position, provisional license, or license.

27 (2) In making a disqualification waiver determination under  
28 subdivision (c)(1) of this section, the licensing agency or requesting agency  
29 may consider the following factors:

30 (A) The nature and severity of the offense;

31 (B) The consequences of the offense;

32 (C) The number and frequency of offenses;

33 (D) The relation between the crime and the health, safety,  
34 and welfare of persons served by the licensing agency or requesting agency,  
35 such as:

36 (i) The age and vulnerability any victim of the

1 offense;

2 (ii) The harm suffered by any victim; and

3 (iii) The similarity between any victim and persons  
4 served by the licensing agency or requesting agency;

5 (E) The time elapsed without a repeat of the same or  
6 similar offense;

7 (F) Documentation of successful completion of training or  
8 rehabilitation concerning the offense; and

9 (G) Any other relevant information.

10 (d) The decision of the licensing agency or requesting agency to  
11 refuse to waive disqualification from holding a position, provisional  
12 license, or license under subsection (c) of this section shall constitute the  
13 final administrative agency action and shall not be subject to review.

14 (e)(1) A qualified entity shall not be disqualified from licensure  
15 when the operator has been found guilty of or has pleaded guilty or nolo  
16 contendere to a misdemeanor if the offense did not involve exploitation of an  
17 adult, abuse of a person, neglect of a person, theft, or sexual contact.

18 (2) An applicant, ElderChoices provider, or employee shall not  
19 be disqualified from permanent employment or providing care to the elderly or  
20 to an individual with a disability, or both, when the applicant, provider, or  
21 employee has been found guilty of or has pleaded guilty or nolo contendere to  
22 a misdemeanor if the offense did not involve exploitation of an adult, abuse  
23 of a person, neglect of a person, theft, or sexual contact.

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

29 ~~(g)(f)~~ If an operator or qualified entity fails or refuses to  
30 cooperate in obtaining criminal records checks, such circumstances shall be  
31 grounds to deny or revoke the qualified entity's license or other operating  
32 authority, provided the process of obtaining criminal records checks shall  
33 not delay the process of the application for a license or other operational  
34 authority.

35 ~~(h)(g)~~ Any unlicensed qualified entity violating this subchapter shall  
36 be guilty of a Class A misdemeanor for each violation.

1           (i)(h) To the extent that there is any conflict with § 17-1-103, this  
2 section shall supersede § 17-1-103.

3           ~~(j)(i)~~ This section shall not apply to teacher licensure or  
4 certification or nursing licensure and certification as governed by §§ 6-17-  
5 410 and 17-87-312, respectively.

6  
7           SECTION 28. Arkansas Code § 20-78-604 is amended to read as follows:  
8           20-78-604. Qualifications for child care ownership, operation, or  
9 employment.

10           (a) Without proof of rehabilitation as provided in subsection (b) of  
11 this section, no person shall be eligible to be a child care facility owner,  
12 operator, or employee in a licensed or church-operated exempt facility if  
13 that person has pleaded guilty or nolo contendere to or has been found guilty  
14 of any ~~of the following offenses~~ felony or Class A misdemeanor offense by any  
15 court in the State of Arkansas or of any similar offense by a court in  
16 another state or of any similar offense by a federal court or military court,  
17 regardless of whether the record of conviction is sealed or expunged or the  
18 conviction is pardoned.+

19           ~~(1) Capital murder as prohibited in § 5-10-101;~~

20           ~~(2) Murder in the first and second degrees as prohibited in §§~~  
21 ~~5-10-102 and 5-10-103;~~

22           ~~(3) Manslaughter as prohibited in § 5-10-104;~~

23           ~~(4) Battery in the first and second degrees as prohibited in §§~~  
24 ~~5-13-201 and 5-13-202;~~

25           ~~(5) Aggravated assault as prohibited in § 5-13-204;~~

26           ~~(6) Terroristic threatening in the first degree as prohibited in~~  
27 ~~§ 5-13-301;~~

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

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

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

33           ~~(10) Rape as prohibited in § 5-14-103;~~

34           ~~(11) Sexual assault in the first degree, second degree, third~~  
35 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~

36           ~~(12) Incest as prohibited in § 5-26-202;~~

1 ~~(13) Endangering the welfare of a minor in the first degree as~~  
2 ~~prohibited in § 5-27-203;~~

3 ~~(14) Permitting child abuse as prohibited in § 5-27-221(a)(1)~~  
4 ~~and (3);~~

5 ~~(15) Engaging children in sexually explicit conduct for use in~~  
6 ~~visual or print media, transportation of minors for prohibited sexual~~  
7 ~~conduct, or use of a child or consent to use of a child in a sexual~~  
8 ~~performance by producing, directing, or promoting a sexual performance by a~~  
9 ~~child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;~~

10 ~~(16) Distribution to minors as prohibited in § 5-64-406;~~

11 ~~(17) Manufacture, delivery, or possession with intent to~~  
12 ~~manufacture or deliver any controlled substance as prohibited in § 5-64-401;~~

13 ~~(18) Sexual indecency with a child as prohibited in § 5-14-110;~~

14 ~~(19) Pandering or possessing visual or print medium depicting~~  
15 ~~sexually explicit conduct involving a child as prohibited by § 5-27-304;~~

16 ~~(20) Negligent homicide as prohibited by § 5-10-105;~~

17 ~~(21) Assault in the first degree as prohibited by § 5-13-205;~~

18 ~~(22) Coercion as prohibited by § 5-13-208;~~

19 ~~(23) Sexual misconduct as prohibited by § 5-14-107 [repealed];~~

20 ~~(24) Public sexual indecency as prohibited by § 5-14-111;~~

21 ~~(25) Indecent exposure as prohibited by § 5-14-112;~~

22 ~~(26) Endangering the welfare of a minor in the second degree as~~  
23 ~~prohibited by § 5-27-204;~~

24 ~~(27) Any felony or any misdemeanor involving violence or sexual~~  
25 ~~misconduct;~~

26 ~~(28) Criminal attempt, criminal solicitation, or criminal~~  
27 ~~conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to~~  
28 ~~commit any of the offenses listed in this section;~~

29 ~~(29) Computer child pornography as prohibited in § 5-27-603; and~~

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

32 (b)(1) Any person pleading guilty or nolo contendere or found guilty  
33 of any of the offenses ~~listed~~ described in subsection (a) of this section  
34 shall be absolutely disqualified to be an owner, operator, or employee in a  
35 child care facility, licensed or church-operated exempt, during the period of  
36 that person's confinement, probation, or parole.



1 request to review the database, the bureau shall notify the state agency if  
2 the database contains any criminal history records on the applicant; and

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

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

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

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

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

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

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

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

35 (2) If the state agency can verify that the applicant has been  
36 employed by a state agency in a designated position within sixty (60) days

1 before the application or has lived continuously in the State of Arkansas for  
 2 the past five (5) years, the bureau shall conduct only a state criminal  
 3 history check on the applicant.

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

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

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

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

14 (e) Before making a temporary or permanent offer of employment in a  
 15 designated position, a state agency shall inform applicants 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 applicant 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 (f) Except as provided in ~~subdivision (g)(2)~~ subsection (g) of this  
 22 section, no person shall be eligible for employment with a state agency in a  
 23 designated position if that person has pleaded guilty or nolo contendere to,  
 24 or been found guilty of, any ~~of the following offenses~~ felony or Class A  
 25 misdemeanor offense by any court in the State of Arkansas or of any similar  
 26 offense by a court in another state or of any similar offense by a federal  
 27 court or military court unless the conviction was vacated or reversed,  
 28 regardless of whether the record of the conviction is sealed or expunged or  
 29 the conviction is pardoned.+

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, and 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—5-27-305, 5-~~  
31 ~~27-402, and 5-27-403;~~  
32 ~~(23) Adult abuse that constitutes a felony, as prohibited in §~~  
33 ~~5-28-103;~~  
34 ~~(24) Theft of property, as prohibited in § 5-36-103;~~  
35 ~~(25) Theft by receiving, as prohibited in § 5-36-106;~~  
36 ~~(26) Arson, as prohibited in § 5-38-301;~~

1           ~~(27) Burglary, as prohibited in § 5-39-201;~~  
2           ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
3 ~~§§ 5-64-101—5-64-608, as prohibited in § 5-64-401;~~  
4           ~~(29) Promotion of prostitution in the first degree, as~~  
5 ~~prohibited in § 5-70-104;~~  
6           ~~(30) Stalking, as prohibited in § 5-71-229;~~  
7           ~~(31) Computer child pornography, as prohibited in § 5-27-603;~~  
8           ~~(32) Computer exploitation of a child in the first degree, as~~  
9 ~~prohibited in § 5-27-605; or~~  
10           ~~(33) Criminal attempt, criminal complicity, criminal~~  
11 ~~solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,~~  
12 ~~5-3-301, and 5-3-401, to commit any of the offenses listed in this~~  
13 ~~subsection.~~

14           ~~(g)(1) For purposes of this section, an expunged record of a~~  
15 ~~conviction or plea of guilty or nolo contendere to an offense listed in~~  
16 ~~subsection (f) of this section shall not be considered a conviction or a plea~~  
17 ~~of guilty or nolo contendere to the offense unless the offense is also listed~~  
18 ~~in subdivision (g)(2) of this section.~~

19           ~~(2) Because of the serious nature of the following offenses and~~  
20 ~~the close relationship between the following offenses and the type of work~~  
21 ~~that is to be performed by the applicant, a conviction of one (1) or more of~~  
22 ~~the following offenses by an applicant shall result in permanent~~  
23 ~~disqualification from employment in a designated position:~~

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

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

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

28                   ~~(D) Rape, as prohibited in § 5-14-103;~~

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

31                   ~~(F) Endangering the welfare of a minor in the first degree~~  
32 ~~and endangering the welfare of a minor in the second degree, as prohibited in~~  
33 ~~§§ 5-27-203 and 5-27-204;~~

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

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

36                   ~~(I) Endangering the welfare of an incompetent person in~~

1 ~~the first degree, as prohibited in § 5-27-201; or~~

2 ~~(J) Adult abuse that constitutes a felony, as prohibited~~  
3 ~~in § 5-28-103.~~

4 (g)(1) A state agency may waive the disqualification described in  
5 subsection (f) of this section and allow a person to be employed with the  
6 state agency in a designated position upon making a determination that the  
7 person does not pose a risk of harm to any other person served by the state  
8 agency or persons to be served by the person holding the position of  
9 employment.

10 (2) In making a disqualification waiver determination under  
11 subdivision (g)(1) of this section, the state agency may consider the  
12 following factors:

13 (A) The nature and severity of the offense;

14 (B) The consequences of the offense;

15 (C) The number and frequency of offenses;

16 (D) The relation between the crime and the health, safety,  
17 and welfare of persons served the state agency, such as:

18 (i) The age and vulnerability any victim of the  
19 offense;

20 (ii) The harm suffered by any victim; and

21 (iii) The similarity between any victim and persons  
22 served by the state agency;

23 (E) The time elapsed without a repeat of the same or  
24 similar offense;

25 (F) Documentation of successful completion of training or  
26 rehabilitation concerning the offense; and

27 (G) Any other relevant information.

28 (h) The decision of the state agency to refuse to waive  
29 disqualification from holding a position of employment under subsection (g)  
30 of this section shall constitute the final administrative agency action and  
31 shall not be subject to review.

32  
33 SECTION 30. Arkansas Code § 21-15-103 is amended to read as follows:

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 July  
4 1, 2000.

5 (B) An incumbent employee in a designated position shall have a  
6 subsequent criminal background check completed within five (5) years of the  
7 initial criminal background check and every five (5) years thereafter.

8 (2)(A) State agencies shall ensure that all employees in  
9 designated positions will have applied for central registry checks by October  
10 1, 2002, and shall adopt a rule that prescribes how central registry checks  
11 on incumbent employees will be phased in over the period of time prior to  
12 July 1, 2002.

13 (B) An incumbent employee in a designated position shall  
14 have subsequent central registry checks completed within five (5) years of  
15 the initial central registry check and every five (5) years thereafter.

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

21 (A)(i) The criminal history check form to the  
22 Identification Bureau of the Department of Arkansas State Police.

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

25 (B)(i) The central registry check to the Child  
26 Maltreatment Central Registry, the Adult and Long-Term Care Facility Resident  
27 Maltreatment Central Registry, and the Certified Nurses Assistants Central  
28 Registry for a review of the registry databases.

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

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

35 (2) If the state agency can verify that the applicant has been  
36 employed by a state agency in a designated position within sixty (60) days

1 before the application or has lived continuously in the State of Arkansas for  
 2 the past five (5) years, the bureau shall conduct only a state criminal  
 3 history check on the applicant.

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

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

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

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

14 (e) If a waiver applicant has been named as an offender or perpetrator  
 15 in a true, substantiated, or founded report from the Child Maltreatment  
 16 Central Registry, the Adult and Long-Term Care Facility Resident Maltreatment  
 17 Central Registry, or the Certified Nursing Assistant/Employment Clearance  
 18 Registry, the state agency shall discharge the employee.

19 (f) A state agency shall inform all employees in designated positions  
 20 that:

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

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

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

25 (B) Central registry report from the registries.

26 (g) Except as provided in ~~subdivision (h)(1)~~ subsection (h) of this  
 27 section, a state agency shall discharge from employment in a designated  
 28 position any person who has pleaded guilty or nolo contendere to, or been  
 29 found guilty of, any ~~of the following offenses~~ felony or Class A misdemeanor  
 30 offense by any court in the State of Arkansas or of any similar offense by a  
 31 court in another state or of any similar offense by a federal court or  
 32 military court unless the conviction was vacated or reversed, regardless of  
 33 whether the record of the conviction is sealed or expunged or the conviction  
 34 is pardoned.+

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

36 ~~(2) Murder in the first degree and second degree, as prohibited~~

1 ~~in §§ 5-10-102 and 5-10-103;~~  
2 ~~(3) Manslaughter, as prohibited in § 5-10-104;~~  
3 ~~(4) Negligent homicide, as prohibited in § 5-10-105;~~  
4 ~~(5) Kidnapping, as prohibited in § 5-11-102;~~  
5 ~~(6) False imprisonment in the first degree, as prohibited in §~~  
6 ~~5-11-103;~~  
7 ~~(7) Permanent detention or restraint, as prohibited in § 5-11-~~  
8 ~~106;~~  
9 ~~(8) Robbery, as prohibited in § 5-12-102;~~  
10 ~~(9) Aggravated robbery, as prohibited in § 5-12-103;~~  
11 ~~(10) Battery in the first degree, as prohibited in § 5-13-201;~~  
12 ~~(11) Aggravated assault, as prohibited in § 5-13-204;~~  
13 ~~(12) Introduction of controlled substance into body of another~~  
14 ~~person, as prohibited in § 5-13-210;~~  
15 ~~(13) Terroristic threatening in the first degree, as prohibited~~  
16 ~~in § 5-13-301;~~  
17 ~~(14) Rape, as prohibited in § 5-14-103;~~  
18 ~~(15) Sexual indecency with a child, as prohibited in § 5-14-110;~~  
19 ~~(16) Sexual assault in the first degree, second degree, third~~  
20 ~~degree, or fourth degree, as prohibited in §§ 5-14-124—5-14-127;~~  
21 ~~(17) Incest, as prohibited in § 5-26-202;~~  
22 ~~(18) Offenses against the family, as prohibited in §§ 5-26-303—~~  
23 ~~5-26-306;~~  
24 ~~(19) Endangering the welfare of an incompetent person in the~~  
25 ~~first degree, as prohibited in § 5-27-201;~~  
26 ~~(20) Endangering the welfare of a minor in the first degree, as~~  
27 ~~prohibited in § 5-27-203;~~  
28 ~~(21) Permitting abuse of a child, as prohibited in § 5-27-~~  
29 ~~221(a)(1) and (3);~~  
30 ~~(22) Engaging children in sexually explicit conduct for use in~~  
31 ~~visual or print medium, transportation of minors for prohibited sexual~~  
32 ~~conduct, pandering, or possessing visual or print medium depicting sexually~~  
33 ~~explicit conduct involving a child, or the use of a child or consent to the~~  
34 ~~use of a child in a sexual performance by producing, directing, or promoting~~  
35 ~~a sexual performance by a child, as prohibited in §§ 5-27-303—5-27-305, 5-~~  
36 ~~27-402, and 5-27-403;~~

1 ~~(23) Adult abuse constituting a felony, as prohibited in § 5-28-~~  
2 ~~103;~~

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

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

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

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

7 ~~(28) Felony violation of the Uniform Controlled Substances Act,~~  
8 ~~§§ 5-64-101-5-64-608, as prohibited in § 5-64-401;~~

9 ~~(29) Promotion of prostitution in the first degree, as~~  
10 ~~prohibited in § 5-70-104;~~

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

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

13 ~~(32) Computer exploitation of a child in the first degree, as~~  
14 ~~prohibited in § 5-27-605; or~~

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

19 ~~(h)(1) For purposes of this section, an expunged record of a~~  
20 ~~conviction or plea of guilty or nolo contendere to an offense listed in~~  
21 ~~subsection (g) of this section shall not be considered a conviction or plea~~  
22 ~~of guilty or nolo contendere to the offense unless the offense is also listed~~  
23 ~~in subdivision (h)(2) of this section.~~

24 ~~(2) Because of the serious nature of the offenses and the close~~  
25 ~~relationship to the type of work that is to be performed, the following~~  
26 ~~offenses shall result in permanent disqualification:~~

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

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

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

31 ~~(D) Rape, as prohibited in § 5-14-103;~~

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

34 ~~(F) Endangering the welfare of a minor in the first degree~~  
35 ~~and endangering the welfare of a minor in the second degree, as prohibited in~~  
36 ~~§§ 5-27-203 and 5-27-204;~~

1 ~~(G) Incest, as prohibited in § 5-26-202;~~  
2 ~~(H) Arson, as prohibited in § 5-38-301;~~  
3 ~~(I) Endangering the welfare of an incompetent person in~~  
4 ~~the first degree, as prohibited in § 5-27-201; and~~  
5 ~~(J) Adult abuse that constitutes a felony, as prohibited~~  
6 ~~in § 5-28-103.~~

7 (h)(1) A state agency may waive the disqualification described in  
8 subsection (g) of this section and allow a person to continue employment with  
9 the state agency in a designated position upon making a determination that  
10 the person does not pose a risk of harm to any other person served by the  
11 state agency or persons to be served by the person holding the position of  
12 employment.

13 (2) In making a disqualification waiver determination under  
14 subdivision (h)(1) of this section, the state agency may consider the  
15 following factors:

16 (A) The nature and severity of the offense;  
17 (B) The consequences of the offense;  
18 (C) The number and frequency of offenses;  
19 (D) The relation between the crime and the health, safety,  
20 and welfare of persons served the state agency, such as:

21 (i) The age and vulnerability any victim of the  
22 offense;

23 (ii) The harm suffered by any victim; and  
24 (iii) The similarity between any victim and persons  
25 served by the state agency;

26 (E) The time elapsed without a repeat of the same or  
27 similar offense;

28 (F) Documentation of successful completion of training or  
29 rehabilitation concerning the offense; and

30 (G) Any other relevant information.

31 (i) The decision of the state agency to refuse to waive  
32 disqualification from holding a position of employment under subsection (h)  
33 of this section shall constitute the final administrative agency action and  
34 shall not be subject to review.

35  
36 SECTION 31. Arkansas Code § 21-15-111 is amended to read as follows:

1           21-15-111. Hiring new employees into designated financial or  
2 information technology positions.

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

8           (B) Within five (5) days of the state agency's decision to  
9 make an offer of employment to the applicant, the state agency shall forward  
10 the criminal history check form to the Identification Bureau of the  
11 Department of Arkansas State Police and request the bureau to review the  
12 database of criminal history.

13           (C) Within three (3) days of the receipt of a request to  
14 review the database, the bureau shall notify the state agency if the database  
15 contains any criminal history record on the applicant.

16           (2) If no criminal history record regarding the applicant is  
17 found in the database, then the state agency may make an offer of temporary  
18 employment to the applicant while the bureau completes a criminal history  
19 check and the state agency determines whether the applicant is disqualified  
20 from employment under subsection (f) of this section.

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

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

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 applicant upon receiving a criminal history check request  
31 from a state agency.

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

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

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

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

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) Before making a temporary or permanent offer of employment, a  
12 state agency shall inform an applicant that:

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

15 (2) The applicant 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 shall not be considered a~~  
19 ~~conviction or plea of guilty or nolo contendere to the offense. No Except as~~  
20 ~~provided in subsection (g) of this section, no person shall be eligible for~~  
21 ~~employment with a state agency in a designated financial or information~~  
22 ~~technology position if that person has pleaded guilty or nolo contendere to,~~  
23 ~~or has been found guilty of, any ~~of the following offenses~~ felony or Class A~~  
24  ~~misdemeanor offense by any court in the State of Arkansas or of any similar~~  
25 ~~offense by a court in another state or of any similar offense by a federal~~  
26 ~~court or military court unless the conviction was vacated, or reversed,~~  
27 ~~regardless of whether the record of the conviction is sealed or expunged or~~  
28 ~~the conviction is pardoned.~~

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

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

31 ~~(3) Soliciting money or property from incompetents, as~~  
32 ~~prohibited in § 5-27-229;~~

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

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

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

- 1           ~~(7) Theft of leased, rented, or entrusted personal property, as~~  
2 ~~prohibited in § 5-36-115;~~
- 3           ~~(8) Shoplifting, as prohibited in § 5-36-116;~~
- 4           ~~(9) Embezzlement by officer or employee of certain institutions,~~  
5 ~~as prohibited in § 5-36-118;~~
- 6           ~~(10) Theft of public benefits, as prohibited in § 5-36-202;~~
- 7           ~~(11) Theft of wireless service, as prohibited in § 5-36-303;~~
- 8           ~~(12) Facilitating theft of wireless service by manufacture,~~  
9 ~~distribution, or possession of devices for theft of wireless services, as~~  
10 ~~prohibited in § 5-36-304;~~
- 11           ~~(13) Any offense involving theft detection devices, as~~  
12 ~~prohibited in §§ 5-36-401—5-36-405;~~
- 13           ~~(14) Forgery, as prohibited in § 5-37-201;~~
- 14           ~~(15) Falsifying business records, as prohibited in § 5-37-202;~~
- 15           ~~(16) Defrauding secured creditors, as prohibited in § 5-37-203;~~
- 16           ~~(17) Fraud in insolvency, as prohibited in § 5-37-204;~~
- 17           ~~(18) Issuing a false financial statement, as prohibited in § 5-~~  
18 ~~37-205;~~
- 19           ~~(19) Receiving deposits in a failing financial institution, as~~  
20 ~~prohibited in § 5-37-206;~~
- 21           ~~(20) Fraudulent use of a credit card or debit card, as~~  
22 ~~prohibited in § 5-37-207;~~
- 23           ~~(21) Criminal impersonation, as prohibited in § 5-37-208;~~
- 24           ~~(22) Criminal possession of a forgery device, as prohibited in §~~  
25 ~~5-37-209;~~
- 26           ~~(23) Obtaining signature by deception, as prohibited in § 5-37-~~  
27 ~~210;~~
- 28           ~~(24) Defrauding judgment creditors, as prohibited in § 5-37-211;~~
- 29           ~~(25) Unlawfully using slugs, as prohibited in § 5-37-212;~~
- 30           ~~(26) Criminal simulation, as prohibited in § 5-37-213;~~
- 31           ~~(27) Use of false transcript, diploma, or grade report from~~  
32 ~~postsecondary educational institution, as prohibited in § 5-37-225;~~
- 33           ~~(28) Financial identity fraud, as prohibited in § 5-37-227;~~
- 34           ~~(29) Any offense violating The Arkansas Hot Check Law, as~~  
35 ~~prohibited in §§ 5-37-301—5-37-307;~~
- 36           ~~(30) Theft of communication services, as prohibited in § 5-37-~~

1 ~~402;~~

2 ~~(31) Criminal mischief in the first degree, as prohibited in §~~

3 ~~5-38-203;~~

4 ~~(32) Residential or commercial burglary, as prohibited in § 5-~~

5 ~~39-201;~~

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

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

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

9 ~~(36) Any offense involving computer crime, as prohibited in §§~~  
10 ~~5-41-201—5-41-206;~~

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

13 ~~(38) Any offense involving corruption in public office, as~~  
14 ~~prohibited in §§ 5-52-101—5-52-108;~~

15 ~~(39) Tampering with a public record, as prohibited in § 5-54-~~  
16 ~~121;~~

17 ~~(40) Criminal acts constituting Medicaid fraud, as prohibited in~~  
18 ~~§ 5-55-111;~~

19 ~~(41) Any offense involving illegal food coupons, as prohibited~~  
20 ~~in §§ 5-55-201—5-55-205;~~

21 ~~(42) Engaging in a continuing criminal gang, organization, or~~  
22 ~~enterprise, as prohibited in § 5-74-104; or~~

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

27 (g)(1) A state agency may waive the disqualification described in  
28 subsection (f) of this section and allow a person to be employed with the  
29 state agency in a designated financial or information technology position  
30 upon making a determination that the person does not pose a risk of harm to  
31 any other person served by the state agency or persons to be served by the  
32 person to hold the position of employment.

33 (2) In making a disqualification waiver determination under  
34 subdivision (g)(1) of this section, the state agency may consider the  
35 following factors:

36 (A) The nature and severity of the offense;

- 1                   (B) The consequences of the offense;  
2                   (C) The number and frequency of offenses;  
3                   (D) The relation between the crime and the health, safety,  
4 and welfare of persons served the state agency, such as:  
5                   (i) The age and vulnerability any victim of the  
6 offense;  
7                   (ii) The harm suffered by any victim; and  
8                   (iii) The similarity between any victim and persons  
9 served by the state agency;  
10                  (E) The time elapsed without a repeat of the same or  
11 similar offense;  
12                  (F) Documentation of successful completion of training or  
13 rehabilitation concerning the offense; and  
14                  (G) Any other relevant information.  
15                  (h) The decision of the state agency to refuse to waive  
16 disqualification from holding a position of employment under subsection (g)  
17 of this section shall constitute the final administrative agency action and  
18 shall not be subject to review.

19  
20           SECTION 32. Arkansas Code § 21-15-112 is amended to read as follows:

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

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

26           (2) An incumbent employee in a designated financial or  
27 information technology position shall have a subsequent criminal background  
28 check within five (5) years of the initial criminal background check and  
29 every five (5) years thereafter.

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

34           (B) The state agency shall:

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

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

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

7 (2) If the state agency can verify that the employee has been  
8 employed by a state agency in a designated financial or information  
9 technology position within sixty (60) days before applying for the criminal  
10 background check or has lived continuously in the State of Arkansas for the  
11 previous 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 employee, the  
14 bureau shall issue a report to the state agency.

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

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

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

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

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

29 ~~(f) An expunged record of a conviction or plea of guilty or nolo~~  
30 ~~contendere to an offense listed in this subsection shall not be considered a~~  
31 ~~conviction or plea of guilty or nolo contendere to the offense. A Except as~~  
32 ~~provided in subsection (g) of this section, a state agency shall discharge~~  
33 ~~from employment an employee in a designated financial or information~~  
34 ~~technology position who has pleaded guilty or nolo contendere to, or has been~~  
35 ~~found guilty of, any of the following offenses felony or Class A misdemeanor~~  
36 ~~offense by any court in the State of Arkansas or of any similar offense by a~~

1 court in another state or of any similar offense by a federal court or  
2 military court unless the conviction was vacated or reversed, regardless of  
3 whether the record of conviction is sealed or expunged or the conviction is  
4 pardoned.†

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

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

7 ~~(3) Soliciting money or property from incompetents, as~~  
8 ~~prohibited in § 5-27-229;~~

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

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

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

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

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

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

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

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

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

23 ~~(13) Any offense involving theft detection devices, as~~  
24 ~~prohibited in §§ 5-36-401—5-36-405;~~

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

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

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

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

29 ~~(18) Issuing a false financial statement, as prohibited in § 5-~~  
30 ~~37-205;~~

31 ~~(19) Receiving deposits in a failing financial institution, as~~  
32 ~~prohibited in § 5-37-206;~~

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

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

36 ~~(22) Criminal possession of a forgery device, as prohibited in §~~

- 1 ~~5-37-209;~~  
2 ~~(23) Obtaining signature by deception, as prohibited in § 5-37-~~  
3 ~~210;~~  
4 ~~(24) Defrauding judgment creditors, as prohibited in § 5-37-211;~~  
5 ~~(25) Unlawfully using slugs, as prohibited in § 5-37-212;~~  
6 ~~(26) Criminal simulation, as prohibited in § 5-37-213;~~  
7 ~~(27) Use of false transcript, diploma, or grade report from~~  
8 ~~postsecondary educational institution, as prohibited in § 5-37-225;~~  
9 ~~(28) Financial identity fraud, as prohibited in § 5-37-227;~~  
10 ~~(29) Any offense violating The Arkansas Hot Check Law, as~~  
11 ~~prohibited in §§ 5-37-301—5-37-307;~~  
12 ~~(30) Theft of communication services, as prohibited in § 5-37-~~  
13 ~~402;~~  
14 ~~(31) Criminal mischief in the first degree, as prohibited in §~~  
15 ~~5-38-203;~~  
16 ~~(32) Residential or commercial burglary, as prohibited in § 5-~~  
17 ~~39-201;~~  
18 ~~(33) Breaking or entering, as prohibited in § 5-39-202;~~  
19 ~~(34) Computer fraud, as prohibited in § 5-41-103;~~  
20 ~~(35) Computer trespass, as prohibited in § 5-41-104;~~  
21 ~~(36) Any offense involving computer crime, as prohibited in §§~~  
22 ~~5-41-201—5-41-206;~~  
23 ~~(37) Criminal use of property or laundering criminal proceeds,~~  
24 ~~as prohibited in § 5-42-204;~~  
25 ~~(38) Any offense involving corruption in public office, as~~  
26 ~~prohibited in §§ 5-52-101—5-52-108;~~  
27 ~~(39) Tampering with a public record, as prohibited in § 5-54-~~  
28 ~~121;~~  
29 ~~(40) Criminal acts constituting Medicaid fraud, as prohibited in~~  
30 ~~§ 5-55-111;~~  
31 ~~(41) Any offense involving illegal food coupons, as prohibited~~  
32 ~~in §§ 5-55-201—5-55-205;~~  
33 ~~(42) Engaging in a continuing criminal gang, organization, or~~  
34 ~~enterprise, as prohibited in § 5-74-104; or~~  
35 ~~(43) 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 (g)(1) A state agency may waive the disqualification described in  
4 subsection (f) of this section and allow a person to continue employment with  
5 the state agency in a designated financial or information technology position  
6 upon making a determination that the person does not pose a risk of harm to  
7 any other person served by the state agency or persons to be served by the  
8 person holding the position of employment.

9 (2) In making a disqualification waiver determination under  
10 subdivision (g)(1) of this section, the state agency may consider the  
11 following factors:

12 (A) The nature and severity of the offense;

13 (B) The consequences of the offense;

14 (C) The number and frequency of offenses;

15 (D) The relation between the crime and the health, safety,  
16 and welfare of persons served the state agency, such as:

17 (i) The age and vulnerability any victim of the  
18 offense;

19 (ii) The harm suffered by any victim; and

20 (iii) The similarity between any victim and persons  
21 served by the state agency;

22 (E) The time elapsed without a repeat of the same or  
23 similar offense;

24 (F) Documentation of successful completion of training or  
25 rehabilitation concerning the offense; and

26 (G) Any other relevant information.

27 (h) The decision of the state agency to refuse to waive  
28 disqualification from holding a position of employment under subsection (g)  
29 of this section shall constitute the final administrative agency action and  
30 shall not be subject to review.

31  
32 SECTION 33. Arkansas Code § 21-15-113 is repealed.

33 ~~21-15-113. Waiver of exclusion or discharge requirement for persons in~~  
34 ~~designated financial or information technology positions.~~

35 ~~(a)(1) The provisions of §§ 21-15-111 and 21-15-112 prohibiting the~~  
36 ~~hiring of a person or requiring the discharge of a person in a designated~~

1 ~~financial or information technology position may be waived by the director of~~  
2 ~~a state agency upon the request of:~~

3 ~~(A) A supervisor or other managerial employee in the state~~  
4 ~~agency;~~

5 ~~(B) An affected applicant for employment; or~~

6 ~~(C) The person in the designated financial or information~~  
7 ~~technology position who is subject to discharge.~~

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

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

14 ~~(4) If the waiver is not granted and the waiver applicant is an~~  
15 ~~incumbent employee who was not immediately discharged, the state agency shall~~  
16 ~~immediately discharge the employee.~~

17 ~~(5) If the waiver is not granted and the waiver applicant is an~~  
18 ~~applicant for employment, the state agency is prohibited from hiring the~~  
19 ~~applicant in a designated financial or information technology position.~~

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

23 ~~(b)(1) A waiver may be granted upon a preponderance of the evidence~~  
24 ~~that the applicant or employee is rehabilitated such that the public interest~~  
25 ~~is not threatened by the applicant's or employee's employment.~~

26 ~~(2) Evidence of rehabilitation may include:~~

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

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

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

30 ~~(D) Subsequent work history;~~

31 ~~(E) Employment references;~~

32 ~~(F) Character references; and~~

33 ~~(G) Other evidence demonstrating the rehabilitation of the~~  
34 ~~applicant or employee.~~

35  
36 /s/ Abernathy