

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

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 REQUIRE
13 THE DISSEMINATION OF CERTAIN CRIMINAL HISTORY
14 INFORMATION; AND FOR OTHER PURPOSES.
15

Subtitle

16 AN ACT TO PROVIDE THAT CERTAIN EXPUNGED
17 OFFENSES CAUSE DISQUALIFICATION FROM
18 CERTAIN ACTIVITIES FOR PERSONS SUBJECT
19 TO CRIMINAL BACKGROUND CHECKS AND TO
20 REQUIRE THE DISSEMINATION OF CERTAIN
21 CRIMINAL HISTORY INFORMATION.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 9-28-409 is amended to read as follows:
28 9-28-409. Criminal record and child maltreatment checks.

29 (a)(1) Each of the following persons in a child welfare agency shall
30 be checked with the child maltreatment central registry in his or her state
31 of residence and any state of residence in which the person has lived for the
32 past six (6) years and in the person's state of employment, if different, for
33 reports of child maltreatment in compliance with policy and procedures
34 promulgated by the Child Welfare Agency Review Board:

35 (A) An employee having direct and unsupervised contact
36 with children;



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

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

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

7 (E) An owner having direct and unsupervised contact with
8 children; and

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

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

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

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

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

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

33 (A) An employee having direct and unsupervised contact
34 with children;

35 (B) A volunteer having direct and unsupervised contact
36 with children;

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

3 (D) An owner having direct and unsupervised contact with
4 children; and

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

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

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

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

20 (4) Adoptive parents shall complete background checks as
21 required by law.

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

27 (A) An employee having direct and unsupervised contact
28 with children;

29 (B) A volunteer having direct and unsupervised contact
30 with children;

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

33 (D) An owner having direct and unsupervised contact with
34 children; and

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

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

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

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

12 (A) Certification that the subject of the check consents
13 to the completion of the check;

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

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

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

29 (E) Notification that any background check and the results
30 thereof shall be handled in accordance with the requirements of Pub. L. 92-
31 544.

32 (2) The owner or operator of the child welfare agency shall
33 submit the criminal records check form to the Identification Bureau for
34 processing within ten (10) days of hiring the employee, who shall remain
35 under conditional employment until the registry check and criminal records
36 checks required under this subchapter are completed.

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

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

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

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

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

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

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

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

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

- 1 (C) Manslaughter as prohibited in § 5-10-104;
- 2 (D) Negligent homicide as prohibited in § 5-10-105;
- 3 (E) Kidnapping as prohibited in § 5-11-102;
- 4 (F) False imprisonment in the first degree and false
- 5 imprisonment in the second degree as prohibited in §§ 5-11-103 and 5-11-104;
- 6 (G) Permanent detention or restraint as prohibited in § 5-
- 7 11-106;
- 8 (H) Battery in the first degree, battery in the second
- 9 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-
- 10 202, and 5-13-203;
- 11 (I) Aggravated assault as prohibited in § 5-13-204;
- 12 (J) Assault in the first degree and assault in the second
- 13 degree as prohibited in §§ 5-13-205 and 5-13-206;
- 14 (K) Terroristic threatening in the first degree and
- 15 terroristic threatening in the second degree as prohibited in § 5-13-301(a)
- 16 and (b);
- 17 (L) Any sexual offense as prohibited in § 5-14-101 et
- 18 seq.;
- 19 (M) Permitting abuse of a child as prohibited in § 5-27-
- 20 221;
- 21 (N) Endangering the welfare of a minor in the first degree
- 22 and endangering the welfare of a minor in the second degree as prohibited in
- 23 §§ 5-27-203 and 5-27-204;
- 24 (O) Contributing to the delinquency of a minor as
- 25 prohibited in § 5-27-205;
- 26 (P) Engaging children in sexually explicit conduct for use
- 27 in visual or print medium, transportation of minors for prohibited sexual
- 28 conduct, use of a child or consent to use of a child in sexual performance,
- 29 and producing, directing, or promoting sexual performance by a child as
- 30 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 31 (Q) Incest as prohibited in § 5-26-202;
- 32 (R) Interference with visitation as prohibited in § 5-26-
- 33 501;
- 34 (S) Interference with custody as prohibited in § 5-26-502;
- 35 (T) Engaging in conduct with respect to controlled
- 36 substances as prohibited in § 5-64-401;

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

2 (V) Public display of obscenity as prohibited in § 5-68-
3 205;

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

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

8 (Y) Computer child pornography as prohibited in § 5-27-
9 603;

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

12 (AA) Criminal attempt, criminal complicity, criminal
13 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
14 3-301, and 5-3-401 to commit any of the offenses listed in this section;

15 (BB) Any felony or any misdemeanor involving violence,
16 threatened violence, or moral turpitude; and

17 (CC) Any former or future law of this or any other state
18 or of the federal government which is substantially equivalent to one (1) of
19 the aforementioned offenses.

20 (2)(A) Any person who is required to have a criminal check under
21 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
22 contendere to, or is found guilty of, any of the offenses listed in
23 subdivision (e)(1) of this section, unless the conviction is vacated or
24 reversed, shall be absolutely disqualified to be an owner, operator,
25 volunteer, foster parent, adoptive parent, member of an agency's board of
26 directors, or employee in a child welfare agency during the period of his or
27 her confinement, probation, or parole supervision.

28 (B) ~~Except as provided in subdivision (h)(1) of this~~
29 ~~section, any~~ Any person who is required to have a criminal check under
30 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
31 contendere to, or is found guilty of, any of the offenses listed in
32 subdivision (e)(1) of this section, unless the conviction is vacated or
33 reversed, shall be presumed to be disqualified to be an owner, operator,
34 volunteer, foster parent, adoptive parent, member of an agency's board of
35 directors, or employee in a child welfare agency after the completion of his
36 or her term of confinement, probation, or parole supervision. This

1 presumption can be rebutted in the following manner:

2 (i)(a) The applicant must petition the board to make
3 a determination that the applicant does not pose a risk of harm to any
4 person.

5 (b) The applicant shall bear the burden of
6 making such a showing; and

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

14 (a) The nature and severity of the crime;

15 (b) The consequences of the crime;

16 (c) The number and frequency of crimes;

17 (d) The relation between the crime and the

18 health, safety, and welfare of any person, such as:

19 (1) The age and vulnerability of victims
20 of the crime;

21 (2) The harm suffered by the victim; and

22 (3) The similarity between the victim

23 and persons served by a child welfare agency;

24 (e) The time elapsed without a repeat of the
25 same or similar event;

26 (f) Documentation of successful completion of
27 training or rehabilitation pertinent to the incident; and

28 (g) Any other information that bears on the
29 applicant’s ability to care for children or any other relevant information.

30 (C) The board’s decision to disqualify a person from being
31 an owner, operator, volunteer, foster parent, adoptive parent, member of an
32 agency’s board of directors, or an employee in a child welfare agency under
33 this section shall constitute the final administrative agency action and
34 shall not be subject to review.

35 (f)(1) No foster child in the custody of the Department of Health and
36 Human Services shall be placed in the home of any foster or adoptive parent

1 if the criminal records check reveals a felony conviction for:

2 (A) Child abuse or neglect;

3 (B) Spousal abuse;

4 (C) A crime against children, including child pornography;

5 or

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

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

11 (A) Child abuse or neglect;

12 (B) Spousal abuse;

13 (C) A crime against children, including child pornography;

14 or

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

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

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

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

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

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

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

1 ~~and murder in the second degree as prohibited in § 5-10-103;~~
 2 ~~(C) Kidnapping as prohibited in § 5-11-102;~~
 3 ~~(D) Rape as prohibited in § 5-14-103;~~
 4 ~~(E) Sexual assault in the first degree and second degree~~
 5 ~~as prohibited in §§ 5-14-124 and 5-14-125;~~
 6 ~~(F) Endangering the welfare of a minor in the first degree~~
 7 ~~and endangering the welfare of a minor in the second degree as prohibited in~~
 8 ~~§§ 5-27-203 and 5-27-204;~~
 9 ~~(G) Incest as prohibited in § 5-26-202;~~
 10 ~~(H) Arson as prohibited in § 5-38-301;~~
 11 ~~(I) Endangering the welfare of incompetent person in the~~
 12 ~~first degree as prohibited in § 5-27-201; and~~
 13 ~~(J) Adult abuse that constitutes a felony as prohibited in~~
 14 ~~§ 5-28-103.~~

15
 16 SECTION 2. Arkansas Code § 12-12-1009 is amended to read as follows:

17 12-12-1009. Dissemination of conviction information for noncriminal
 18 justice purposes.

19 (a) Conviction information shall be made available for the following
 20 noncriminal justice purposes:

21 (1) To any local, state, or federal governmental agency that
 22 requests the conviction information for the enforcement of a local, state, or
 23 federal law;

24 (2)(A) To any entity authorized either by the subject of the
 25 record in writing or by state or federal law to receive the conviction
 26 information.

27 (B) Expunged records shall be made available under
 28 subdivision (a)(2)(A) of this section as authorized by the Arkansas State
 29 Criminal Records Act, § 12-12-1501 et seq.; and

30 (3) To any federal agency or central repository in another state
 31 requesting the conviction information for a purpose authorized by law.

32 (b) Conviction information disseminated for noncriminal justice
 33 purposes under this subchapter shall be used only for the purposes for which
 34 it was made available and may not be redisseminated.

35 (c) Nonconviction information shall not be available under the
 36 provisions of this subchapter for noncriminal justice purposes.

1 (d) No agency or individual shall confirm the existence or
 2 nonexistence of criminal history information to any person or organization
 3 that would not be eligible to receive the information pursuant to this
 4 subchapter.

5 (e) A local agency may release its own agency records according to its
 6 own policy.

7
 8 SECTION 3. Arkansas Code § 12-12-1503(5), pertaining to the definition
 9 of "conviction information", is amended to read as follows:

10 (5)(A) "Conviction information" means criminal history
 11 information disclosing that a person has pleaded guilty or nolo contendere to
 12 or was found guilty of a criminal offense in a court of law, together with
 13 sentencing information.

14 (B) "Conviction information" ~~does not include~~ includes a
 15 sealed or expunged record under § 12-12-1514;

16
 17 SECTION 4. Arkansas Code Title 12, Chapter 12, Subchapter 15 is
 18 amended to add an additional section to read as follows:

19 12-12-1514. Sealed, expunged, or pardoned records.

20 (a) Except as provided in subsections (d) and (e) of this section,
 21 unless an offense is discharged or dismissed under § 5-4-311; § 5-64-407,
 22 prior to August 12, 2005; § 5-64-413, on or after August 12, 2005; § 16-90-
 23 115; or §§ 16-93-301 – 16-93-303, the Department of Arkansas State Police and
 24 the Arkansas Crime Information Center shall disseminate information in a
 25 sealed, expunged, or pardoned record to a requestor in response to a request
 26 for a noncriminal justice history background check for criminal history
 27 information on a person if:

28 (1) The underlying offense was a:

29 (A) Class Y felony;

30 (B) Class A felony;

31 (C) Class B felony;

32 (D) Class C felony;

33 (E) Class D felony; or

34 (F) Sex offense as defined in § 12-12-903; or

35 (2) The underlying offense resulted in:

36 (A) A violent felony conviction as defined in § 5-73-101;

1 or

2 (B) The person being required to register as a sex
 3 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

4 (b)(1) Except as provided in subdivision (b)(2) of this section, the
 5 Department of Arkansas State Police and the Arkansas Crime Information Center
 6 shall disseminate information in a sealed, expunged, or pardoned record to a
 7 requestor in response to a request for a noncriminal justice history
 8 background check for criminal history information on a person if the
 9 underlying offense was a Class A misdemeanor.

10 (2) The information in a sealed, expunged, or pardoned record of
 11 an underlying Class A misdemeanor offense may not be released if:

12 (A) The conviction reflected in the sealed, expunged, or
 13 pardoned record is the person's only conviction;

14 (B) Three (3) years have passed since the date of
 15 conviction or plea of guilty or nolo contendere; and

16 (C) No other law specifically requires dissemination of
 17 the information.

18 (c)(1) Except as provided in subdivision (c)(2) of this section, the
 19 Department of Arkansas State Police and the Arkansas Crime Information Center
 20 shall disseminate information in a sealed, expunged, or pardoned record to a
 21 requestor in response to a request for a noncriminal justice history
 22 background check for criminal history information on a person if the
 23 underlying offense was a Class B misdemeanor or a Class C misdemeanor.

24 (2) The information in a sealed, expunged, or pardoned record of
 25 an underlying Class B misdemeanor or Class C misdemeanor may not be released
 26 if:

27 (A) The conviction reflected in the sealed, expunged, or
 28 pardoned record is the person's only conviction;

29 (B) One (1) year has passed since the date of conviction
 30 or plea of guilty or nolo contendere; and

31 (C) No other law specifically requires dissemination of
 32 the information.

33 (d) Unless otherwise provided by law, the Department of Arkansas State
 34 Police and the Arkansas Crime Information Center shall not disseminate
 35 information in a sealed, expunged, or pardoned record to a requestor in
 36 response to a request for a noncriminal justice history background check for

1 criminal history information on a person if the person's record was expunged
 2 under § 16-90-601, § 16-90-602, or § 16-93-1207.

3 (e) Unless otherwise provided by law, the Department of Arkansas State
 4 Police and the Arkansas Crime Information Center shall not disseminate
 5 information in a sealed, expunged, or pardoned record to a requestor in
 6 response to a request for a noncriminal justice history background check for
 7 criminal history information on a person if the person's record:

8 (1) Was requested between August 12, 2005, and the effective
 9 date of this act; and

10 (2) Was not disseminated in response to the request described in
 11 subdivision (e)(1) of this section because the underlying offense did not
 12 cause disqualification from employment, licensure, certification, or other
 13 activities under Acts 2005, No. 1923.

14
 15 SECTION 5. Arkansas Code § 16-90-601 is amended to read as follows:
 16 16-90-601. Minor felony offenders subsequently pardoned for offense.

17 (a) Any person who committed a felony in this state while under
 18 sixteen (16) years of age, was convicted and given a suspended sentence,
 19 subsequently received a pardon for the conviction, and has not since been
 20 convicted of another criminal offense shall have the criminal record expunged
 21 by the sentencing court.

22 (b) The order expunging the record shall state that entry of the order
 23 is authorized by this section.

24
 25 SECTION 6. Arkansas Code § 16-90-602 is amended to read as follows:
 26 16-90-602. Minor nonviolent felony offenders - Petition.

27 (a) A person who is convicted of a nonviolent felony committed while
 28 the person was under the age of eighteen (18) years and who was incarcerated
 29 or whose sentence was suspended, or who was placed on probation, may petition
 30 the convicting court to have the record of the conviction expunged upon
 31 completion of the sentence or expiration of the suspension or probation
 32 period or at any time thereafter.

33 (b) When a petition is filed with the court for expunging the record
 34 of conviction of a minor as authorized in this section, the court may enter
 35 an order expunging the record as requested in the petition if it determines
 36 that it is in the best interest of the petitioner and the state.

1 (c) The order expunging the record shall state that entry of the order
 2 is authorized by this section.

3
 4 SECTION 7. Arkansas Code § 17-87-312 is amended to read as follows:
 5 17-87-312. Criminal background checks.

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

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

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

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

19 (e) ~~Except as provided in subdivision (1)(1) of this section, no~~ No
 20 person shall be eligible to receive or hold a license issued by the board if
 21 that person has pleaded guilty or nolo contendere to or has been found guilty
 22 of any of the following offenses by any court in the State of Arkansas or of
 23 any similar offense by a court in another state or of any similar offense by
 24 a federal court:

- 25 (1) Capital murder as prohibited in § 5-10-101;
- 26 (2) Murder in the first degree as prohibited in § 5-10-102 and
 27 murder in the second degree as prohibited in § 5-10-103;
- 28 (3) Manslaughter as prohibited in § 5-10-104;
- 29 (4) Negligent homicide as prohibited in § 5-10-105;
- 30 (5) Kidnapping as prohibited in § 5-11-102;
- 31 (6) False imprisonment in the first degree as prohibited in § 5-
 32 11-103;
- 33 (7) Permanent detention or restraint as prohibited in § 5-11-
 34 106;
- 35 (8) Robbery as prohibited in § 5-12-102;
- 36 (9) Aggravated robbery as prohibited in § 5-12-103;

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

- 1 (31) Criminal attempt, criminal complicity, criminal
- 2 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
- 3 3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- 4 (32) Computer child pornography as prohibited in § 5-27-603; and
- 5 (33) Computer exploitation of a child in the first degree as
- 6 prohibited in § 5-27-605.

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

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

12 (2) ~~Except as provided in subdivision (1)(1) of this section,~~
 13 ~~upon~~ Upon receipt of information from the Identification Bureau of the
 14 Department of Arkansas State Police that the person holding the letter of
 15 provisional licensure has pleaded guilty or nolo contendere to, or has been
 16 found guilty of, any offense listed in subsection (e) of this section, the
 17 board shall immediately revoke the provisional license.

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

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

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

- 24 (A) The age at which the crime was committed;
- 25 (B) The circumstances surrounding the crime;
- 26 (C) The length of time since the crime;
- 27 (D) Subsequent work history;
- 28 (E) Employment references;
- 29 (F) Character references; and
- 30 (G) Other evidence demonstrating that the applicant does

31 not pose a threat to the health or safety of the public.

32 (h)(1) Any information received by the board from the Identification
 33 Bureau of the Department of Arkansas State Police pursuant to this section
 34 shall not be available for examination except by:

- 35 (A) The affected applicant for licensure or his or her
- 36 authorized representative; or

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

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

5 (i) Any information made available to the affected applicant for
 6 licensure or the person whose license is subject to revocation shall be
 7 information pertaining to that person only.

8 (j) Rights of privilege and confidentiality established in this
 9 section shall not extend to any document created for purposes other than this
 10 background check.

11 (k) The board shall adopt the necessary rules and regulations to fully
 12 implement the provisions of this section.

13 ~~(l)(1) For purposes of this section, an expunged record of a~~
 14 ~~conviction or a plea of guilty or nolo contendere to an offense listed in~~
 15 ~~subsection (e) of this section shall not be considered a conviction, guilty~~
 16 ~~plea, or nolo contendere plea to the offense unless the offense is also~~
 17 ~~listed in subdivision (1)(2) of this section.~~

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

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

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

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

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

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

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

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

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

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

35 ~~(J) Adult abuse that constitutes a felony as prohibited in~~
 36 ~~§ 5-28-103.~~

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SECTION 8. Arkansas Code § 17-97-312 is amended to read as follows:
17-97-312. Criminal background checks.

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

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

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

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

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

(f) ~~Except as provided in subdivision (m)(1) of this section, no~~ No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;

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

- 1 (30) Stalking as prohibited in § 5-71-229;
- 2 (31) Criminal attempt, criminal complicity, criminal
- 3 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
- 4 3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- 5 (32) Computer child pornography as prohibited in § 5-27-603; and
- 6 (33) Computer exploitation of a child in the first degree as
- 7 prohibited in § 5-27-605.

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

11 (2) ~~Except as provided in subdivision (m)(1) of this section,~~
 12 ~~upon~~ Upon receipt of information from the Identification Bureau of the
 13 Department of Arkansas State Police that the person holding a letter of
 14 provisional licensure has pleaded guilty or nolo contendere to or been found
 15 guilty of any offense listed in subsection (f) of this section, the board
 16 shall immediately revoke the provisional license.

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

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

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

- 23 (A) The age at which the crime was committed;
- 24 (B) The circumstances surrounding the crime;
- 25 (C) The length of time since the crime;
- 26 (D) Subsequent work history;
- 27 (E) Employment references;
- 28 (F) Character references; and
- 29 (G) Other evidence demonstrating that the applicant does
- 30 not pose a threat to the health or safety of children.

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

36 (2) No record, file, or document shall be removed from the

1 custody of the department.

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

5 (k) Rights of privilege and confidentiality established in this
 6 section shall not extend to any document created for purposes other than this
 7 background check.

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

10 ~~(m)(1) For purposes of this section, an expunged record of a~~
 11 ~~conviction or plea of guilty of or nolo contendere to an offense listed in~~
 12 ~~subsection (f) of this section shall not be considered a conviction, guilty~~
 13 ~~plea, or nolo contendere plea to the offense unless the offense is also~~
 14 ~~listed in subdivision (m)(2) of this section.~~

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

- 18 ~~(A) Capital murder as prohibited in § 5-10-101;~~
- 19 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~
 20 ~~and murder in the second degree as prohibited in § 5-10-103;~~
- 21 ~~(C) Kidnapping as prohibited in § 5-11-102;~~
- 22 ~~(D) Rape as prohibited in § 5-14-103;~~
- 23 ~~(E) Sexual assault in the first degree as prohibited in §~~
 24 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~
- 25 ~~(F) Endangering the welfare of a minor in the first degree~~
 26 ~~as prohibited in § 5-27-203 and endangering the welfare of a minor in the~~
 27 ~~second degree as prohibited in § 5-27-204;~~
- 28 ~~(G) Incest as prohibited in § 5-26-202;~~
- 29 ~~(H) Arson as prohibited in § 5-38-301;~~
- 30 ~~(I) Endangering the welfare of an incompetent person in~~
 31 ~~the first degree as prohibited in § 5-27-201; and~~
- 32 ~~(J) Adult abuse that constitutes a felony as prohibited in~~
 33 ~~§ 5-28-103.~~

34
 35 SECTION 9. Arkansas Code § 17-103-307 is amended to read as follows:
 36 17-103-307. Criminal background checks.

1 (a) Each first-time applicant for a license issued by the Arkansas
 2 Social Work Licensing Board shall be required to apply to the Identification
 3 Bureau of the Department of Arkansas State Police for a state and national
 4 criminal background check, to be conducted by the Federal Bureau of
 5 Investigation.

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

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

11 (d) Upon completion of the criminal background check, the
 12 Identification Bureau of the Department of Arkansas State Police shall
 13 forward to the board all information obtained concerning the applicant in the
 14 commission of any offense listed in subsection (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) ~~Except as provided in subdivision (m)(1) of this section, no~~ No
 19 person shall be eligible to receive or hold a license issued by the board if
 20 that person has pleaded guilty or nolo contendere to or been found guilty of
 21 any of the following offenses by any court in the State of Arkansas or of any
 22 similar offense by a court in another state or of any similar offense by a
 23 federal court:

- 24 (1) Capital murder as prohibited in § 5-10-101;
- 25 (2) Murder in the first degree as prohibited in § 5-10-102 and
 26 murder in the second degree as prohibited in § 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 § 5-
 31 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 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, and
- 25 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 prohibited
- 34 in § 5-70-104;
- 35 (30) Stalking as prohibited in § 5-71-229;
- 36 (31) Criminal attempt, criminal complicity, criminal

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

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

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

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

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

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

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

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

- 21 (A) The age at which the crime was committed;
- 22 (B) The circumstances surrounding the crime;
- 23 (C) The length of time since the crime;
- 24 (D) Subsequent work history;
- 25 (E) Employment references;
- 26 (F) Character references; and
- 27 (G) Other evidence demonstrating that the applicant does

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

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

35 (j) Any information made available to the affected applicant for
 36 licensure or the person whose license is subject to revocation shall be

1 information pertaining to that person only.

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

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

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

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

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

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

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

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

20 ~~(E) Sexual assault in the first degree as prohibited in §~~
 21 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

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

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

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

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

29 ~~(J) Adult abuse that constitutes a felony as prohibited in~~
 30 ~~§ 5-28-103.~~

31
 32 SECTION 10. Arkansas Code § 20-13-1106 is amended to read as follows:

33 20-13-1106. Disqualifying offenses - Waiver.

34 (a) ~~Except as provided in subdivision (e)(1) of this section, the~~ The
 35 Division of EMS and Trauma Systems of the Division of Health of the
 36 Department of Health and Human Services shall issue a determination that a

1 person is disqualified from certification or recertification if the person
 2 has been found guilty of or has pleaded guilty or nolo contendere to any of
 3 the offenses listed in subsection (b) of this section, including offenses for
 4 which the record has been expunged. However, the Division of EMS and Trauma
 5 Systems shall forward a request for a waiver to the Director of the Division
 6 of Health of the Department of Health and Human Services on all applicants
 7 who have been convicted of the crimes listed in subsection (b) of this
 8 section if five (5) years have passed since the conviction, if five (5) years
 9 have passed since release from custodial confinement, or if the applicants
 10 are currently certified emergency medical technicians, prior to making the
 11 final determination on certification or recertification. These individuals
 12 will not be suspended prior to the director's making the final determination.

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

1 5-26-306;

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

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

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

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

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

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

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

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

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

20 (28) Felony violation of the Uniform Controlled Substances Act,
21 § 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

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

28 (32) Fourth or subsequent driving while intoxicated violations
29 that constitute felony offenses under § 5-65-111(b)(3) and (4);

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

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

33 (c) An applicant shall not be disqualified from certification or
34 recertification when the applicant has been found guilty of or has pleaded
35 guilty or nolo contendere to a misdemeanor if the offense:

36 (1) Did not involve exploitation of an adult, abuse of a person,

1 neglect of a person, or sexual contact; or

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

4 (d)(1) The provisions of this section may be waived by the Department
5 of Health and Human Services upon written request by the person who is the
6 subject of the criminal history check.

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

10 (3) Factors to be considered before granting a waiver shall
11 include, but not be limited to:

- 12 (A) The age at which the crime was committed;
- 13 (B) The circumstances surrounding the crime;
- 14 (C) The length of time since the adjudication of guilt;
- 15 (D) The person's subsequent work history;
- 16 (E) The person's employment references;
- 17 (F) The person's character references; and
- 18 (G) Any other evidence demonstrating that the person does

19 not pose a threat to the health or safety of persons to be cared for.

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

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

- 28 ~~(A) Capital murder as prohibited in § 5-10-101;~~
- 29 ~~(B) Murder in the first degree as prohibited in § 5-10-102~~
30 ~~and murder in the second degree as prohibited in § 5-10-103;~~
- 31 ~~(C) Kidnapping as prohibited in § 5-11-102;~~
- 32 ~~(D) Rape as prohibited in § 5-14-103;~~
- 33 ~~(E) Sexual assault in the first degree as prohibited in §~~
34 ~~5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;~~
- 35 ~~(F) Endangering the welfare of a minor in the first degree~~
36 ~~as prohibited in § 5-27-203 and endangering the welfare of a minor in the~~

1 ~~second degree as prohibited in § 5-27-204;~~

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

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

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

6 ~~(J) Adult abuse that constitutes a felony as prohibited in~~
7 ~~§ 5-28-103.~~

8
9 SECTION 11. Arkansas Code § 20-33-205 is amended to read as follows:

10 20-33-205. Provisional licenses - Disqualification from employment -
11 Resubmission of applications - Denial or revocation - Penalties.

12 (a) Except as provided in subsection (c), ~~subsection (d), or~~
13 ~~subsection (f) or subsection (d)~~ of this section:

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

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

22 (3)(A) A qualified entity shall not knowingly employ a person
23 who has pleaded guilty or nolo contendere to or has been found guilty of any
24 of the offenses listed in subsection (b) of this section by any court in the
25 State of Arkansas or of any similar offense by a court in another state or of
26 any similar offense by a federal court.

27 (B) Except as provided in subsection (c), ~~subsection (d),~~
28 ~~or subsection (f) or subsection (d)~~ of this section:

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

33 (ii) A licensing agency shall issue a determination
34 that a person is disqualified from employment with a qualified entity if the
35 person has been found guilty of or pleaded guilty or nolo contendere to any
36 of the offenses listed in subsection (b) of this section. A requesting agency

1 shall issue a determination that a person or ElderChoices provider is
 2 disqualified from providing care to the elderly or to an individual with a
 3 disability, or both, if the person or provider has been found guilty of or
 4 pleaded guilty or nolo contendere to any of the offenses listed in subsection
 5 (b) of this section.

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

1 (22) Engaging children in sexually explicit conduct for use in
 2 visual or print media, transportation of minors for prohibited sexual
 3 conduct, pandering or possessing visual or print medium depicting sexually
 4 explicit conduct involving a child, or use of a child or consent to use of a
 5 child in a sexual performance by producing, directing, or promoting a sexual
 6 performance by a child as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402, and
 7 5-27-403;

8 (23) Felony adult abuse as prohibited by § 5-28-103;

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

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

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

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

13 (28) Felony violation of the Uniform Controlled Substances Act,
 14 § 5-64-101 - § 5-64-608, as prohibited in § 5-64-401;

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

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

18 (31) Criminal attempt, criminal complicity, criminal
 19 solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-
 20 3-301, and 5-3-401 to commit any of the offenses listed in this subsection;

21 (32) Forgery as prohibited in § 5-37-201;

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

23 (34) Obtaining a controlled substance by fraud as prohibited in
 24 § 5-64-403;

25 (35) Computer child pornography as prohibited in § 5-27-603; and

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

28 (c) A qualified entity that is issued a provisional license based on
 29 the criminal history of the operator may resubmit the application for
 30 licensure with a new operator. If the qualified entity does not resubmit the
 31 application within fifteen (15) days of the issuance of the provisional
 32 license, then the qualified entity's license shall be immediately denied or
 33 revoked.

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

36 (2)(A) Except as provided in subdivision (d)(2)(B) of this

1 section, a conviction or plea of guilty or nolo contendere for a felony or
 2 misdemeanor offense listed in subsection (b) of this section shall not
 3 disqualify an applicant for employment if the date of conviction of the
 4 offense is at least ten (10) years from the date of the application and the
 5 individual has no criminal convictions of any type or nature during the ten-
 6 year period.

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

- 10 (i) Capital murder as prohibited in § 5-10-101;
- 11 (ii) Murder in the first degree as prohibited in §
 12 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- 13 (iii) Kidnapping as prohibited in § 5-11-102;
- 14 (iv) Rape as prohibited in § 5-14-103;
- 15 (v) Sexual assault in the first degree as prohibited
 16 in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-
 17 14-125;
- 18 (vi) Endangering the welfare of an incompetent
 19 person in the first degree as prohibited in § 5-27-201;
- 20 (vii) Felony adult abuse as prohibited by § 5-28-
 21 103; and
- 22 (viii) Arson as prohibited in § 5-38-301.

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

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

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

1 ~~subdivision (d)(2)(B) of this section.~~

2 ~~(g)~~(f) If an operator or qualified entity fails or refuses to
 3 cooperate in obtaining criminal records checks, such circumstances shall be
 4 grounds to deny or revoke the qualified entity's license or other operating
 5 authority, provided the process of obtaining criminal records checks shall
 6 not delay the process of the application for a license or other operational
 7 authority.

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

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

12 ~~(j)~~(i) This section shall not apply to teacher licensure or
 13 certification or nursing licensure and certification as governed by §§ 6-17-
 14 410 and 17-87-312, respectively.

15
 16 SECTION 12. Arkansas Code § 20-48-804 is amended to read as follows:
 17 20-48-804. Disqualification from employment - Denial or revocation -
 18 Penalties.

19 (a)(1) ~~Except as provided in subsection (f) of this section,~~ a A
 20 licensing agency shall issue a determination that a person is disqualified
 21 from employment with a service provider if the person:

22 (A) Has been found guilty of or pleaded guilty or nolo
 23 contendere to any of the offenses listed in subsection (b) of this section;
 24 or

25 (B) Is registered as a sex offender or is required to
 26 register as a sex offender.

27 (2) ~~Except as provided in subdivisions (c)(1)(B)-(D) of this~~
 28 ~~section and except as provided in subsection (f) of this section,~~ a service
 29 provider shall not knowingly employ a person who:

30 (A) Has pleaded guilty or nolo contendere to or has been
 31 found guilty of any of the offenses listed in subsection (b) of this section
 32 by any court in the State of Arkansas or of any similar offense by a court in
 33 another state or of any similar offense by a federal court; or

34 (B) Is registered as a sex offender or is required to
 35 register as a sex offender.

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

- 1 (2) Murder in the first degree as prohibited in § 5-10-102 and
2 murder in the second degree, as prohibited in § 5-10-103;
- 3 (3) Manslaughter as prohibited in § 5-10-104;
- 4 (4) Negligent homicide as prohibited in § 5-10-105;
- 5 (5) Kidnapping as prohibited in § 5-11-102;
- 6 (6) False imprisonment in the first degree as prohibited in § 5-
7 11-103;
- 8 (7) Permanent detention or restraint as prohibited in § 5-11-
9 106;
- 10 (8) Robbery as prohibited in § 5-12-102;
- 11 (9) Aggravated robbery as prohibited in § 5-12-103;
- 12 (10) Battery as prohibited in §§ 5-13-201 - 5-13-203;
- 13 (11) Aggravated assault as prohibited in § 5-13-204;
- 14 (12) Introduction of controlled substance into body of another
15 person as prohibited in § 5-13-210;
- 16 (13) Terroristic threatening in the first degree and second
17 degree as prohibited in § 5-13-301(a) and (b);
- 18 (14) Rape as prohibited in § 5-14-103;
- 19 (15) Sexual indecency with a child as prohibited in § 5-14-110;
- 20 (16) Sexual assault in the first degree, second degree, third
21 degree, and fourth degree as prohibited in §§ 5-14-124 - 5-14-127;
- 22 (17) Incest as prohibited in § 5-26-202;
- 23 (18) Offenses against the family as prohibited in §§ 5-26-303 -
24 5-26-306;
- 25 (19) Endangering the welfare of an incompetent person in the
26 first degree as prohibited in § 5-27-201;
- 27 (20) Endangering the welfare of a minor in the first degree as
28 prohibited in § 5-27-203;
- 29 (21) Permitting child abuse as prohibited in § 5-27-221(a)(1)
30 and (3);
- 31 (22) Engaging children in sexually explicit conduct for use in
32 visual or print media, transportation of minors for prohibited sexual
33 conduct, pandering or possessing visual or print medium depicting sexually
34 explicit conduct involving a child, or use of a child or consent to use of a
35 child in a sexual performance by producing, directing, or promoting a sexual
36 performance by a child as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-

- 1 27-402, and 5-27-403;
- 2 (23) Felony adult abuse as prohibited in § 5-28-103;
- 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) Felony violation of the Uniform Controlled Substances Act,
- 7 § 5-64-101 et seq., as prohibited in § 5-64-401;
- 8 (28) Burglary as prohibited in § 5-39-201;
- 9 (29) Promotion of prostitution in the first degree as prohibited
- 10 in § 5-70-104;
- 11 (30) Stalking as prohibited in § 5-71-229;
- 12 (31) Forgery as prohibited in § 5-37-201;
- 13 (32) Breaking or entering as prohibited in § 5-39-202;
- 14 (33) Obtaining a controlled substance by fraud as prohibited in
- 15 § 5-64-403;
- 16 (34) Criminal attempt, criminal complicity, criminal
- 17 solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,
- 18 5-3-301, and 5-3-401, to commit any of the offenses listed in this
- 19 subsection;
- 20 (35) Computer child pornography as prohibited in § 5-27-603;
- 21 (36) Computer exploitation of a child in the first degree as
- 22 prohibited in § 5-27-605;
- 23 (37) School bus piracy, as prohibited in § 5-11-107;
- 24 (38) Assault in the first degree and second degree, as
- 25 prohibited in §§ 5-13-205 and 5-13-206;
- 26 (39) Terroristic act, as prohibited in § 5-13-310;
- 27 (40) Any sexual offense, as prohibited in § 5-14-101 et seq.;
- 28 (41) Voyeurism offenses, as prohibited in § 5-16-101;
- 29 (42) Death threats concerning a school employee or student, as
- 30 prohibited in § 5-17-101;
- 31 (43) Interference with visitation, as prohibited in § 5-26-501;
- 32 (44) Interference with custody, as prohibited in § 5-26-502;
- 33 (45) Contributing to the delinquency of a minor, as prohibited
- 34 in § 5-27-205;
- 35 (46) Contributing to the delinquency of a juvenile, as
- 36 prohibited in § 5-27-220;

1 (47) Soliciting money or property from incompetents, as
 2 prohibited in § 5-27-229;

3 (48) Computer crimes against minors, as prohibited in § 5-27-601
 4 et seq.;

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

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

7 (51) Financial identity fraud, as prohibited in § 5-37-227;

8 (52) Resisting arrest, as prohibited in § 5-54-103;

9 (53) Felony interference with a law enforcement officer, as
 10 prohibited in § 5-54-104;

11 (54) Cruelty to animals, as prohibited in § 5-62-101;

12 (55) Engaging in conduct with respect to controlled substances,
 13 as prohibited in § 5-64-401 et seq.;

14 (56) Public display of obscenity, as prohibited in § 5-68-205;

15 (57) Promoting obscene materials, as prohibited in § 5-68-303;

16 (58) Promoting obscene performance, as prohibited in § 5-68-304;

17 (59) Obscene performance at a live public show, as prohibited in
 18 § 5-68-305;

19 (60) Prostitution, as prohibited in § 5-70-102;

20 (61) Patronizing a prostitute, as prohibited in § 5-70-103;

21 (62) Promotion of prostitution in the first degree, second
 22 degree, or third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

23 (63) Criminal use of a prohibited weapon, as prohibited in § 5-
 24 73-104;

25 (64) Simultaneous possession of drugs and firearms, as
 26 prohibited in § 5-74-106; and

27 (65) Unlawful discharge of a firearm from a vehicle, as
 28 prohibited in § 5-74-107.

29 (c)(1)(A) The provisions of this section shall not be waived by the
 30 licensing or requesting agency.

31 (B) Except for any conviction stated in subsection (b) of
 32 this section that involves violence or any sexual offense, this section shall
 33 not disqualify a person from employment if:

34 (i) The conviction was for a misdemeanor offense;

35 (ii) The date of the conviction is at least five (5)
 36 years from the date of the background check request; and

1 (iii) The individual has no criminal convictions of
 2 any type or nature during the five-year period preceding the background check
 3 request.

4 (C) Except for any conviction stated in subsection (b) of
 5 this section that involves violence or any sexual offense, this section shall
 6 not disqualify a person from employment if:

- 7 (i) The conviction was for a felony offense;
- 8 (ii) The date of the conviction is at least ten (10)
 9 years from the date of the background check request; and

10 (iii) The individual has no criminal convictions of
 11 any type or nature during the ten-year period preceding the background check
 12 request.

13 (D) A person registered as a sex offender or required to
 14 register as a sex offender shall be disqualified from employment.

15 (2) Because of the serious nature of the offenses and the close
 16 relationship to the type of work that is to be performed, the following
 17 offenses shall result in permanent disqualification of employment and are not
 18 subject to subdivisions (c)(1)(B)-(D) of this section:

- 19 (A) Capital murder as prohibited in § 5-10-101;
- 20 (B) Murder in the first degree as prohibited in § 5-10-102
 21 and murder in the second degree as prohibited in § 5-10-103;
- 22 (C) Kidnapping as prohibited in § 5-11-102;
- 23 (D) Rape as prohibited in § 5-14-103;
- 24 (E) Sexual assault in the first degree as prohibited in §
 25 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
- 26 (F) Endangering the welfare of an incompetent person in
 27 the first degree as prohibited in § 5-27-201;
- 28 (G) Felony adult abuse as prohibited in § 5-28-103; and
- 29 (H) Arson as prohibited in § 5-38-301.

30 (3) An applicant or employee shall not be disqualified from
 31 permanent employment if the applicant or employee has been found guilty of or
 32 has pleaded guilty or nolo contendere to a misdemeanor if the offense did not
 33 involve exploitation of an adult, abuse of a person, neglect of a person,
 34 theft, or sexual contact.

35 (d) If a service provider fails or refuses to cooperate in obtaining
 36 criminal history records checks, those circumstances shall be grounds to deny

1 or revoke the service provider's license or other operating authority.

2 (e) Any service provider violating this subchapter shall be guilty of
 3 a Class A misdemeanor for each violation.

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

9
 10 SECTION 13. Arkansas Code § 21-15-103 is amended to read as follows:

11 21-15-103. Deadline - Scope of check - Report - Notice - Discharge for
 12 persons in designated positions.

13 (a)(1)(A) State agencies shall ensure that all employees in designated
 14 positions will have applied for criminal history checks by October 1, 2000,
 15 and shall adopt a rule that prescribes how criminal background checks on
 16 incumbent employees will be phased in over the period of time prior to July
 17 1, 2000.

18 (B) An incumbent employee in a designated position shall
 19 have a subsequent criminal background check completed within five (5) years
 20 of the initial criminal background check and every five (5) years thereafter.

21 (2)(A) State agencies shall ensure that all employees in
 22 designated positions will have applied for central registry checks by October
 23 1, 2002, and shall adopt a rule that prescribes how central registry checks
 24 on incumbent employees will be phased in over the period of time prior to
 25 July 1, 2002.

26 (B) An incumbent employee in a designated position shall
 27 have subsequent central registry checks completed within five (5) years of
 28 the initial central registry check and every five (5) years thereafter.

29 (3) In accordance with subdivisions (a)(1) and (2) of this
 30 section, each employee of a state agency in a designated position shall
 31 complete a criminal history check form and a central registry check form
 32 obtained from the state agency and shall submit the form to the state agency.
 33 The state agency shall forward:

34 (A)(i) The criminal history check form to the
 35 Identification Bureau of the Department of Arkansas State Police.

36 (ii) The state agency shall pay any fee associated

1 with the criminal history check on behalf of the employee; and

2 (B)(i) The central registry check to the Child
 3 Maltreatment Central Registry, the Adult and Long-Term Care Facility Resident
 4 Maltreatment Central Registry, and the Certified Nurses Assistants Central
 5 Registry for a review of the registry databases.

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

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

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

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

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

21 (B) If the state agency determines that an employee is
 22 disqualified from employment, then the state agency shall discharge the
 23 employee.

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

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

32 (f) A state agency shall inform all employees in designated positions
 33 that:

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

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

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

2 (B) Central registry report from the registries.

3 (g) ~~Except as provided in subdivision (h)(1) of this section, a~~ A
 4 state agency shall discharge from employment in a designated position any
 5 person who has pleaded guilty or nolo contendere to, or been found guilty of,
 6 any of the following offenses by any court in the State of Arkansas or of any
 7 similar offense by a court in another state or of any similar offense by a
 8 federal court unless the conviction was vacated or reversed:

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

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

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

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

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

15 (6) False imprisonment in the first degree, as prohibited in §
 16 5-11-103;

17 (7) Permanent detention or restraint, as prohibited in § 5-11-
 18 106;

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

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

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

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

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

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

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

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

29 (16) Sexual assault in the first degree, second degree, third
 30 degree, or fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;

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

32 (18) Offenses against the family, as prohibited in §§ 5-26-303 -
 33 5-26-306;

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

36 (20) Endangering the welfare of a minor in the first degree, as

1 prohibited in § 5-27-203;

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

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

11 (23) Adult abuse constituting a felony, as prohibited in § 5-28-
12 103;

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

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

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

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

17 (28) Felony violation of the Uniform Controlled Substances Act,
18 §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;

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

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

22 (31) Computer child pornography, as prohibited in § 5-27-603;

23 (32) Computer exploitation of a child in the first degree, as
24 prohibited in § 5-27-605; or

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

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

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

- 1 (A) ~~Capital murder, as prohibited in § 5-10-101;~~
- 2 (B) ~~Murder in the first degree and murder in the second~~
- 3 ~~degree, as prohibited in §§ 5-10-102 and 5-10-103;~~
- 4 (C) ~~Kidnapping, as prohibited in § 5-11-102;~~
- 5 (D) ~~Rape, as prohibited in § 5-14-103;~~
- 6 (E) ~~Sexual assault in the first degree and second degree,~~
- 7 ~~as prohibited in §§ 5-14-124 and 5-14-125;~~
- 8 (F) ~~Endangering the welfare of a minor in the first degree~~
- 9 ~~and endangering the welfare of a minor in the second degree, as prohibited in~~
- 10 ~~§§ 5-27-203 and 5-27-204;~~
- 11 (G) ~~Incest, as prohibited in § 5-26-202;~~
- 12 (H) ~~Arson, as prohibited in § 5-38-301;~~
- 13 (I) ~~Endangering the welfare of an incompetent person in~~
- 14 ~~the first degree, as prohibited in § 5-27-201; and~~
- 15 (J) ~~Adult abuse that constitutes a felony, as prohibited~~
- 16 ~~in § 5-28-103.~~

17

18 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the

19 General Assembly of the State of Arkansas that the public relies on the

20 Department of Arkansas State Police and the Arkansas Crime Information Center

21 to provide complete and accurate criminal history information; that certain

22 individuals have used the criminal justice system and had their criminal

23 conviction records sealed, expunged, or pardoned in an effort to hide their

24 record from a prospective employer or licensing agency; that the current use

25 of the criminal justice system has created an unequal access to the

26 procedures that allow for disclosure of criminal records for noncriminal

27 justice purposes; that it is the intent of this act to allow disclosure of

28 certain information for employment and licensing purposes; that this act will

29 allow equal treatment of persons who have criminal records and that treatment

30 of persons will not be determined by their ability to access the legal

31 system; that it is the intent of this General Assembly to create a uniform

32 system that can be applied to all noncriminal justice record checks processed

33 through the Department of Arkansas State Police and to allow individuals of

34 equal degrees of criminality to be treated equally when noncriminal justice

35 background checks are accessed; and that this act is necessary because of the

36 importance to employers and licensing agencies of releasing certain

1 information that may be considered in the employment or licensing decision.
2 Therefore, an emergency is declared to exist and this act being necessary for
3 the preservation of the public peace, health, and safety shall become
4 effective on July 1, 2007.

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