

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: H3/15/07

A Bill

HOUSE BILL 2357

5 By: Representatives Stewart, Burkes
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE "CHILD WELFARE AGENCY
10 LICENSING ACT"; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO AMEND THE "CHILD WELFARE
13 AGENCY LICENSING ACT".
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16

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

19 SECTION 1. Arkansas Code § 9-28-402(20), regarding the definition of
20 "residential child care facility", is amended to read as follows:

21 (20) "Residential child care facility" means any child welfare
22 agency that provides care, training, education, custody, or supervision on a
23 twenty-four-hour basis for six (6) or more unrelated minors, excluding foster
24 homes that have six (6) or more minors who are all related to each other but
25 who are not related to the foster parents;
26

27 SECTION 2. Arkansas Code § 9-28-407 is amended to read as follows:

28 9-28-407. Licenses required and issued.

29 (a)(1) It shall be unlawful for any person, partnership, group,
30 corporation, association, or other entity or identifiable group of entities
31 having a coordinated ownership of controlling interest to operate or assist
32 in the operation of a child welfare agency that has not been licensed by the
33 Child Welfare Agency Review Board from licensing pursuant to this
34 subchapter.

35 (2) This license shall be required in addition to any other
36 license required by law for all entities that fit the definition of a child



1 welfare agency and are not specifically exempted, except that no
2 nonpsychiatric residential treatment facility or agency licensed or exempted
3 pursuant to this subchapter shall be deemed to fall within the meaning of §
4 20-10-101 for any purpose.

5 (3) Any child welfare agency capacity licensed or permitted by
6 the board as of March 1, 2003, whether held by the original licensee or by a
7 successor in interest to the original licensee, is exempted from:

8 (A) Obtaining any license or permit from the Office of
9 Long-Term Care of the Division of Medical Services of the Department of
10 Health and Human Services;

11 (B) Obtaining any permit from the Health Services Permit
12 Agency or the Health Services Permit Commission to operate at the capacity
13 licensed by the board as of March 1, 2003; and

14 (C) Obtaining any permit from the agency or the commission
15 to operate at any future expanded capacity serving only non-Arkansas
16 residents unless a permit is required by federal law or regulation.

17 (4) Any further expansion of capacity by a licensee of the board
18 shall require a license or permit from the office and the agency unless the
19 bed expansion is exempted under subdivisions (a)(3)(A)-(C) of this section.

20 (5)(A) Subdivisions (a)(3) and (4) of this section shall be
21 construed to include a child welfare agency that is licensed or permitted by
22 the Child Welfare Agency Review Board as a residential facility as of March
23 1, 2003, if the licensee then met and continues to meet the following
24 criteria:

25 (i) The licensee is a nonhospital-based residential
26 facility that specializes in providing treatment and care for seriously
27 emotionally disturbed children under eighteen (18) years of age who have co-
28 occurring substance abuse and psychiatric disorders;

29 (ii) The licensee possesses accreditation from at
30 least one (1) of the following national accreditation entities:

31 (a) The Commission on Accreditation of
32 Rehabilitation Facilities;

33 (b) The Council on Accreditation of Services
34 for Families and Children; or

35 (c) The Joint Commission on Accreditation of
36 Healthcare Organizations;

1 (iii) The licensee is licensed by the Bureau of
2 Alcohol and Drug Abuse Prevention or its successor; and

3 (iv) The licensee is operating a nontraditional
4 program that is approved by the Department of Education.

5 (B)(i) Licensees described in subdivision (a)(5)(A) of
6 this section shall be eligible for reimbursement by the Arkansas Medicaid
7 Program under the same methodology and at the same reimbursement rates as
8 residential treatment facilities that do not specialize in treating children
9 with co-occurring substance abuse and psychiatric disorders.

10 (ii) However, Medicaid payments shall be reduced by
11 payments received from other payers in connection with Medicaid-covered care
12 and treatment furnished to Medicaid recipients.

13 (b)(1) It shall be unlawful for any person to falsify an application
14 for licensure, to knowingly circumvent the authority of this subchapter, to
15 knowingly violate the orders issued by the board, or to advertise the
16 provision of child care or child placement when not licensed under this
17 subchapter to provide those services, unless determined by the board to be
18 exempt from licensure under this subchapter.

19 (2) Any violation of this section shall constitute a Class
20 D felony.

21 (c)(1) Any person, partnership, group, corporation, organization,
22 association, or other entity or identifiable group of entities having a
23 coordinated ownership of controlling interest, desiring to operate a child
24 welfare agency shall first make application for a license or a church-
25 operated exemption for the facility to the board on the application forms
26 furnished for this purpose by the board.

27 (2) The division shall also furnish the applicant with a copy of
28 this subchapter and the policies and procedures of the board at the time the
29 person requests an application form. The child welfare agency shall submit a
30 separate application for license for each separate physical location of a
31 child welfare agency.

32 (d)(1) The division shall review, inspect, and investigate each
33 applicant to operate a child welfare agency and shall present a
34 recommendation to the board whether the board should issue a license and what
35 the terms and conditions of the license should be.

36 (2) The division shall complete its recommendation within ninety

1 (90) days after receiving a complete application from the applicant. A
2 complete application shall consist of:

3 (A) A completed application form prepared and furnished by
4 the board;

5 (B) A copy of the articles of incorporation, bylaws, and
6 current board roster, if applicable, including names and addresses of the
7 officers;

8 (C) A complete personnel list with verifications of
9 qualifications and experience;

10 (D) Substantiation of the financial soundness of the
11 agency's operation; and

12 (E) A written description of the agency's program of care,
13 including intake policies, types of services offered, and a written plan for
14 providing health care services to children in care.

15 (e)(1) The board shall issue a regular license which shall be
16 effective until adverse action is taken on the license if the board finds
17 that:

18 (A) The applicant for a child welfare agency license meets all
19 licensing requirements; or

20 (B) The applicant for a child welfare agency license meets all
21 essential standards, has a favorable compliance history, and has the ability
22 and willingness to comply with all standards within a reasonable time.

23 (2) The board may issue a provisional license which shall be
24 effective for up to one (1) year if the board finds that the applicant meets
25 all essential standards but the applicant requires more frequent monitoring
26 because the applicant's ability or willingness to meet all standards within a
27 reasonable time has not been favorably determined. The board shall at no time
28 issue a regular or provisional license to any agency or facility that does
29 not meet all essential standards.

30 (f)(1) A license to operate a child welfare agency shall apply only to
31 the address and location stated on the application and license issued, and it
32 shall be transferable from one (1) holder of the license to another or from
33 one (1) place to another.

34 (2) Whenever ownership of a controlling interest in the
35 operation of a child welfare agency is sold, the following procedures must be
36 followed:

1 (A) The seller shall notify the division of the sale at
2 least thirty (30) days prior to the completed sale;

3 (B) The seller shall remain responsible for the operation
4 of the child welfare agency until such time as the agency is closed or a
5 license is issued to the buyer;

6 (C) The seller shall remain liable for all penalties
7 assessed against the child welfare agency that are imposed for violations or
8 deficiencies occurring before the transfer of a license to the buyer;

9 (D) The buyer shall be subject to any corrective action
10 notices to which the seller was subject; and

11 (E) The provisions of subsection (a) of this section,
12 including those provisions regarding obtaining licenses or permits from the
13 office and regarding obtaining any permits from the Health Services Permit
14 Agency or the commission shall apply in their entirety to the new owner of
15 the child welfare agency.

16 (g) If the board votes to issue a license to operate a child welfare
17 agency, the license must be posted in a conspicuous place in the child
18 welfare agency and must state at a minimum:

19 (1) The full legal name of the entity holding the license,
20 including the business name, if different;

21 (2) The address of the child welfare agency;

22 (3) The effective date and expiration date of the license;

23 (4) The type of child welfare agency the licensee is authorized
24 to operate;

25 (5) The maximum number and ages of children that may receive
26 services from the agency, if the agency is not a child placement agency; and

27 (6) The status of the license, whether regular or provisional;
28 and

29 (7) Any special conditions or limitations of the license.

30 (h)(1) Reports, correspondence, memoranda, case histories, or other
31 materials, including protected health information, compiled or received by a
32 licensee or a state agency engaged in placing a child, including both foster
33 care and protective services records, shall be confidential and shall not be
34 released or otherwise made available except to the extent permitted by
35 federal law and only:

36 (A) To the director as required by regulation;

1 (B) For adoptive placements as provided by the Revised
2 Uniform Adoption Act, § 9-9-201 et seq.;

3 (C) To multidisciplinary teams under § 12-12-502(b);

4 (D)(i) To the child's parent, guardian, or custodian.

5 (ii) However, the licensee or state agency may
6 redact information from the record such as the name or address of foster
7 parents or providers when it is in the best interest of the child;

8 (iii) The licensee or state agency may redact
9 counseling records, psychological or psychiatric evaluations, examinations,
10 or records, drug screens or drug evaluations, or similar information
11 concerning a parent if the other parent is requesting a copy of a record;

12 (E) To the child;

13 (F)(i) To health care providers to assist in the care and
14 treatment of the child at the discretion of the licensee or state agency and
15 if deemed to be in the best interest of the child.

16 (ii) "Health care providers" includes doctors,
17 nurses, emergency medical technicians, counselors, therapists, mental health
18 professionals, and dentists;

19 (G) To school personnel and day care centers caring for
20 the child at the discretion of the licensee or state agency and if deemed to
21 be in the best interest of the child;

22 (H)(i) To foster parents, the foster care record for
23 foster children currently placed in their home.

24 (ii) However, information about the parents or
25 guardians and any siblings not in the foster home shall not be released;

26 (I)(i) To the board.

27 (ii) However, at any board meeting no information
28 which identifies by name or address any protective services recipient or
29 foster care child shall be orally disclosed or released in written form to
30 the general public;

31 (J) To the Division of ~~Youth~~ Children and Family Services
32 of the Department of Health and Human Services, including child welfare
33 agency licensing specialists;

34 (K) For any audit or similar activity conducted in
35 connection with the administration of any such plan or program by any
36 governmental agency which is authorized by law to conduct the audit or

1 activity;

2 (L) Upon presentation of an order of appointment, to a
3 court-appointed special advocate;

4 (M) To the attorney ad litem for the child;

5 (N) For law enforcement or the prosecuting attorney upon
6 request at the discretion of the licensee or state agency and if deemed to be
7 in the best interest of the child;

8 (O) To circuit courts, as provided for in the Arkansas
9 Juvenile Code of 1989, § 9-27-301 et seq.;

10 (P) In a criminal or civil proceeding conducted in
11 connection with the administration of any such plan or program;

12 (Q) For purposes directly connected with the
13 administration of any of the state plans as outlined at 42 U.S.C. 671(a)(8),
14 as in effect January 1, 2001;

15 (R) For the administration of any other federal or
16 federally assisted program which provides assistance, in cash or in kind, or
17 services, directly to individuals on the basis of need; ~~or~~

18 (S)(i) To individual federal and state representatives and
19 senators in their official capacity and their staff members with no
20 redisclosure of information.

21 (ii) No disclosure shall be made to any committee or
22 legislative body of any information which identifies by name or address any
23 recipient of services; ~~or~~

24 (T) To a grand jury or court upon a finding that
25 information in the record is necessary for the determination of an issue
26 before the court or grand jury; ~~;~~

27 (U) To a person, provider, or government entity identified
28 by the licensee or the state agency as having services needed by the child or
29 his or her family; or

30 (V) To volunteers authorized by the licensee or the state
31 agency to provide support or services to the child or his or her family at
32 the discretion of the licensee or the state agency and only to the extent
33 information is needed to provide the support or services.

34 (2) Foster home and adoptive home records are confidential and
35 shall not be released except:

36 (A) To the foster parents or adoptive parents;

1 (B) For purposes of review or audit, by the appropriate
2 federal or state agency;

3 (C) Upon allegations of child maltreatment in the foster
4 home or adoptive home, to the investigating agency;

5 (D) To the board;

6 (E) To the Division of Children and Family Services of the
7 Department of Health and Human Services, including child welfare agency
8 licensing specialists;

9 (F) To law enforcement or the prosecuting attorney upon
10 request;

11 (G) To a grand jury or court upon a finding that
12 information in the record is necessary for the determination of an issue
13 before the court or grand jury; ~~or~~

14 (H)(i) To individual federal and state representatives and
15 senators in their official capacity and their staff members with no
16 redisclosure of information.

17 (ii) No disclosure shall be made to any committee or
18 legislative body of any information that identifies by name or address any
19 recipient of services; or

20 (I) To the attorney ad litem and court-appointed special
21 advocate, the home study on the adoptive family selected by the department to
22 adopt the juvenile.

23 (3)(A) Any person or agency to whom disclosure is made shall not
24 disclose to any other person reports or other information obtained pursuant
25 to this subsection.

26 (B) Any person disclosing information in violation of this
27 subsection shall be guilty of a Class C misdemeanor.

28 (C) Nothing in this subchapter shall be construed to
29 prevent subsequent disclosure by the child or his or her parent or guardian.

30 (i) Foster parents approved by a child placement agency licensed by
31 the Department of Health and Human Services shall not be liable for damages
32 caused by their foster children nor shall they be liable to the foster
33 children nor to the parents or guardians of the foster children for injuries
34 to the foster children caused by acts or omissions of the foster parents
35 unless the acts or omissions constitute malicious, willful, wanton, or
36 grossly negligent conduct.

1 (j) Volunteers approved by the department of Health and Human Services
2 who transport foster children or clients of the department or who supervise
3 visits at the request of the department shall not be liable to the foster
4 children or the clients nor to the parents or guardians of any foster
5 children for injuries to the clients or the foster children caused by the
6 acts or omissions of the volunteers unless the acts or omissions constitute
7 malicious, willful, wanton, or grossly negligent conduct.

8
9 SECTION 3. Arkansas Code § 9-28-409 is amended to read as follows:

10 9-28-409. Criminal record and child maltreatment checks.

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

17 (A) An employee having direct and unsupervised contact
18 with children;

19 (B) A volunteer having direct and unsupervised contact
20 with children;

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

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

25 (E) An owner having direct and unsupervised contact with
26 children; and

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

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

32 (3)(A) Any person required to be checked under this section who
33 is found to have any record of child maltreatment in the official record of
34 the registry shall be reviewed by the owner or operator of the facility in
35 consultation with the board to determine appropriate corrective action
36 measures which would indicate, but are not limited to, training, probationary

1 employment, or nonselection for employment.

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

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

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

15 (A) An employee having direct and unsupervised contact
16 with children;

17 (B) A volunteer having direct and unsupervised contact
18 with children;

19 ~~(C) A foster parent and all household members age sixteen (16)~~
20 ~~years and older;~~

21 ~~(D)~~(C) An owner having direct and unsupervised contact
22 with children; and

23 ~~(E)~~(D) A member of the agency's board of directors having
24 direct and unsupervised contact with children.

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

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

33 (3) All persons required to be checked with the Department of
34 Arkansas State Police under this subsection shall repeat the check every five
35 (5) years, except that adoptive parents shall not repeat the check after
36 court issuance of a final decree of adoption in the adoption case for which

1 the check was obtained.

2 (4) Adoptive parents shall complete background checks as
3 required by law.

4 (c)(1) In compliance with federal law and regulations and with policy
5 and procedures promulgated by the board, each of the following persons in a
6 child welfare agency who has not lived in Arkansas continuously for the past
7 six (6) years, and all foster parents and foster home household members age
8 sixteen (16) years and older, excluding foster children, shall be checked
9 with the Federal Bureau of Investigation for convictions of the offenses
10 listed in this subchapter:

11 (A) An employee having direct and unsupervised contact
12 with children;

13 (B) A volunteer having direct and unsupervised contact
14 with children;

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

17 ~~(D)~~(C) An owner having direct and unsupervised contact
18 with children; and

19 ~~(E)~~(D) A member of the agency's board of directors having
20 direct and unsupervised contact with children.

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

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

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

32 (A) Certification that the subject of the check consents
33 to the completion of the check;

34 (B) Certification that the subject of the check has not
35 been convicted of a crime and if the subject of the check has been convicted
36 of a crime, contains a description of the crime and the particulars of the

1 conviction;

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

7 (D) Notification that the subject of the check may be
8 denied a license or exemption to operate a child welfare agency or may be
9 denied unsupervised access to children in the care of a child welfare agency
10 due to information obtained by the check which indicates that the subject of
11 the check has been convicted of, or is under pending indictment for, a crime
12 listed in this subchapter; and

13 (E) Notification that any background check and the results
14 thereof shall be handled in accordance with the requirements of Pub. L. 92-
15 544.

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

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

26 (4)(A) In the event a legible set of fingerprints as determined
27 by the Department of Arkansas State Police and the Federal Bureau of
28 Investigation cannot be obtained after a minimum of three (3) attempts by
29 qualified law enforcement personnel, the board shall determine eligibility
30 based upon a name check by the Department of Arkansas State Police and the
31 Federal Bureau of Investigation.

32 (B) Foster parents and adoptive parents shall only be
33 determined eligible based on a finger-print criminal background check.

34 (5)(A) An owner or operator of a child welfare agency shall not be
35 liable during a conditional period of service for hiring any person required
36 to have a background check pursuant to this subchapter who may be subject to

1 a charge of false swearing upon completion of central registry and criminal
2 records check.

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

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

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

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

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

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

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

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

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

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

28 (G) Permanent detention or restraint as prohibited in § 5-
29 11-106;

30 (H) Battery in the first degree, battery in the second
31 degree, and battery in the third degree as prohibited in §§ 5-13-201, 5-13-
32 202, and 5-13-203;

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

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

36 (K) Terroristic threatening in the first degree and

1 *terroristic threatening in the second degree as prohibited in § 5-13-301(a)*
2 *and (b);*

3 *(L) Any sexual offense as prohibited in § 5-14-101 et*
4 *seq.;*

5 *(M) Permitting abuse of a child as prohibited in § 5-27-*
6 *221;*

7 *(N) Endangering the welfare of a minor in the first degree*
8 *and endangering the welfare of a minor in the second degree as prohibited in*
9 *§§ 5-27-203 and 5-27-204;*

10 *(O) Contributing to the delinquency of a minor as*
11 *prohibited in § 5-27-205;*

12 *(P) Engaging children in sexually explicit conduct for use*
13 *in visual or print medium, transportation of minors for prohibited sexual*
14 *conduct, use of a child or consent to use of a child in sexual performance,*
15 *and producing, directing, or promoting sexual performance by a child as*
16 *prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;*

17 *(Q) Incest as prohibited in § 5-26-202;*

18 *(R) Interference with visitation as prohibited in § 5-26-*
19 *501;*

20 *(S) Interference with custody as prohibited in § 5-26-502;*

21 *(T) Engaging in conduct with respect to controlled*
22 *substances as prohibited in § 5-64-401;*

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

24 *(V) Public display of obscenity as prohibited in § 5-68-*
25 *205;*

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

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

30 *(Y) Computer child pornography as prohibited in § 5-27-*
31 *603;*

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

34 *(AA) Criminal attempt, criminal complicity, criminal*
35 *solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-*
36 *3-301, and 5-3-401 to commit any of the offenses listed in this section;*

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

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

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

14 (B) Except as provided in subdivision (h)(1) of this
15 section, any person who is required to have a criminal check under
16 subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo
17 contendere to, or is found guilty of, any of the offenses listed in
18 subdivision (e)(1) of this section, unless the conviction is vacated or
19 reversed, shall be presumed to be disqualified to be an owner, operator,
20 volunteer, foster parent, adoptive parent, member of an agency's board of
21 directors, or employee in a child welfare agency after the completion of his
22 or her term of confinement, probation, or parole supervision. The operator,
23 volunteer, foster parent, adoptive parent, household member of a foster
24 parent or an adoptive parent, member of any agency's board of directors, or
25 an employee in a child welfare agency cannot petition the board unless the
26 agency supports the petition. This presumption can be rebutted in the
27 following manner:

28 (i)(a) The applicant must petition the board to make
29 a determination that the applicant does not pose a risk of harm to any
30 person.

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

33 (ii) The board in its discretion may permit an
34 applicant to be an owner, operator, volunteer, foster parent, adoptive
35 parent, member of an agency's board of directors, or an employee in a child
36 welfare agency notwithstanding having been convicted of an offense listed in

1 this section upon making a determination that the applicant does not pose a
2 risk of harm to any person served by the facility. In making this
3 determination, the board shall consider the following factors:

- 4 (a) The nature and severity of the crime;
- 5 (b) The consequences of the crime;
- 6 (c) The number and frequency of crimes;
- 7 (d) The relation between the crime and the

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

9 (1) The age and vulnerability of victims
10 of the crime;

11 (2) The harm suffered by the victim;

12 and

13 (3) The similarity between the victim
14 and persons served by a child welfare agency;

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

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

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

21 (C) The board's decision to disqualify a person from being
22 an owner, operator, volunteer, foster parent, adoptive parent, member of an
23 agency's board of directors, or an employee in a child welfare agency under
24 this section shall constitute the final administrative agency action and
25 shall not be subject to review.

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

29 (A) Child abuse or neglect;

30 (B) Spousal abuse;

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

32 or

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

35 (2) No foster child in the custody of another state agency who
36 is placed in Arkansas shall be placed in any home if the criminal records

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

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

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

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

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

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

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

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

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

33 (F) Endangering the welfare of a minor in the first degree
34 and endangering the welfare of a minor in the second degree as prohibited in
35 §§ 5-27-203 and ~~5-27-204~~ 5-27-206;

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

- 1 (H) Arson as prohibited in § 5-38-301;
- 2 (I) Endangering the welfare of incompetent person in the
- 3 first degree as prohibited in § 5-27-201; and
- 4 (J) Adult abuse that constitutes a felony as prohibited in
- 5 § 5-28-103.

6 (i)(1) Upon request by the department, local law enforcement shall
7 provide the department with criminal background information on persons who
8 have applied to be a provisional foster home, a regular foster home, or an
9 adoptive home for the department.

10 (2) Upon request by the department, local law enforcement shall
11 provide the department with criminal background information on persons whose
12 home is being studied by the department.

13
14 SECTION 4: Arkansas Code § 9-28-410(f), regarding foster care
15 placements, is amended to read as follows:

16 (f) All division caseworkers, supervisors, and area managers shall
17 have at least ~~six (6) hours~~ one (1) hour of annual training on separation and
18 placement issues, as well as on issues relating to the grief and loss
19 children experience in foster care with multiple placements.

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21 */s/ Stewart, et al*
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