

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: S2/28/11*

# A Bill

SENATE BILL 559

5 By: Senators Laverty, Burnett, J. Dismang, Files, S. Harrelson, J. Hutchinson, D. Johnson, J. Key, P.  
6 Malone, Rapert, J. Taylor, E. Williams, D. Wyatt  
7

## For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS CONCERNING  
10 CRIMINAL BACKGROUND CHECKS FOR HEALTHCARE PROVIDERS;  
11 TO PROVIDE FOR TRANSFERABILITY OF CRIMINAL RECORDS  
12 CHECKS AND DETERMINATION LETTERS AMONG VARIOUS  
13 OPERATIONAL SECTIONS OF A SINGLE SERVICE PROVIDER;  
14 AND FOR OTHER PURPOSES.  
15

## Subtitle

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18 TO PROVIDE FOR TRANSFERABILITY OF  
19 CRIMINAL RECORDS CHECKS AND DETERMINATION  
20 LETTERS AMONG VARIOUS OPERATIONAL  
21 SECTIONS OF A SINGLE SERVICE PROVIDER.  
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 20-38-105(b), concerning offenses for which  
27 criminal background checks of healthcare personnel must be reported, is  
28 amended to read as follows:

29 (b) As used in this section, the following criminal offenses apply to  
30 this section whether or not the record of the offense is expunged, pardoned,  
31 or otherwise sealed:

32 (1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202,  
33 criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401, to  
34 commit any of the offenses in this subsection;

35 (2) Capital murder, § 5-10-101;

36 (3) Murder, §§ 5-10-102 and 5-10-103;



- 1 (4) Manslaughter, § 5-10-104;
- 2 (5) Negligent homicide, § 5-10-105;
- 3 (6) Kidnapping, § 5-11-102;
- 4 (7) False imprisonment ~~in the first degree, § 5-11-103~~ §§ 5-11-  
5 103 and 5-11-104;
- 6 (8) Permanent detention or restraint, § 5-11-106;
- 7 (9) Robbery, §§ 5-12-102 and 5-12-103;
- 8 (10) Battery, ~~§§ 5-13-201 and 5-13-202~~ §§ 5-13-201 – 5-13-203;
- 9 (11) Assault, ~~§§ 5-13-204 and 5-13-206~~ §§ 5-13-204 – 5-13-207;
- 10 (12) Coercion, § 5-13-208;
- 11 (13) Introduction of controlled substance into body of another  
12 person, § 5-13-210;
- 13 (14) Terroristic threatening, § 5-13-301;
- 14 (15) Terroristic act, § 5-13-310;
- 15 (16) Any sexual offense, § 5-14-101 et seq.;
- 16 (17) Voyeurism, § 5-16-102;
- 17 (18) Death threats concerning a school employee or student, § 5-  
18 17-101;
- 19 (19) Incest, § 5-26-202;
- 20 (20) Domestic battery, § 5-26-303 – § 5-26-306;
- 21 (21) Interference with visitation, § 5-26-501;
- 22 (22) Interference with court-ordered custody, § 5-26-502;
- 23 (23) Endangering the welfare of an incompetent person, §§ 5-27-  
24 201 and 5-27-202;
- 25 (24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-  
26 206;
- 27 (25) Contributing to the delinquency of a minor, § 5-27-209;
- 28 (26) Contributing to the delinquency of a juvenile, § 5-27-220;
- 29 (27) Permitting abuse of a minor, § 5-27-221;
- 30 (28) Soliciting money or property from incompetents, § 5-27-229;
- 31 (29) Engaging children in sexually explicit conduct for use in  
32 visual or print media, § 5-27-303;
- 33 (30) Pandering or possessing visual or print medium depicting  
34 sexually explicit conduct involving a child, § 5-27-304;
- 35 (31) Transportation of minors for prohibited sexual conduct, §  
36 5-27-305;

- 1 (32) Employing or consenting to the use of a child in a sexual  
2 performance, § 5-27-402;
- 3 (33) Producing, directing, or promoting a sexual performance by  
4 a child, § 5-27-403;
- 5 (34) Computer crimes against minors, § 5-27-601 et seq.;
- 6 (35) Felony abuse of an endangered or impaired person, § 5-28-  
7 103;
- 8 (36) Theft of property, § 5-36-103;
- 9 (37) Theft of services, § 5-36-104;
- 10 (38) Theft by receiving, § 5-36-106;
- 11 (39) Forgery, § 5-37-201;
- 12 (40) Criminal impersonation, § 5-37-208;
- 13 (41) Financial identity fraud, § 5-37-227;
- 14 (42) Arson, § 5-38-301;
- 15 (43) Burglary, § 5-39-201;
- 16 (44) Breaking or entering, § 5-39-202;
- 17 (45) Resisting arrest, § 5-54-103;
- 18 (46) Felony interference with a law enforcement officer, § 5-54-  
19 104;
- 20 (47) Cruelty to animals, ~~§ 5-62-101~~ §§ 5-62-103 and 5-62-104;
- 21 (48) Felony violation of the Uniform Controlled Substances Act,  
22 §§ 5-64-101 – 5-64-508;
- 23 (49) Public display of obscenity, § 5-68-205;
- 24 (50) Promoting obscene materials, § 5-68-303;
- 25 (51) Promoting obscene performance, § 5-68-304;
- 26 (52) Obscene performance at a live public show, § 5-68-305;
- 27 (53) Prostitution, § 5-70-102;
- 28 (54) Patronizing a prostitute, § 5-70-103;
- 29 (55) Promotion of prostitution, §§ 5-70-104 – 5-70-106;
- 30 (56) Stalking, § 5-71-229;
- 31 (57) Criminal use of a prohibited weapon, § 5-73-104;
- 32 (58) Simultaneous possession of drugs and firearms, § 5-74-106;
- 33 and
- 34 (59) Unlawful discharge of a firearm from a vehicle, § 5-74-107.
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36 SECTION 2. Arkansas Code § 20-38-105(d), concerning exceptions to

1 disqualification of healthcare personnel, is amended to read as follows:

2 (d)(1) This section shall not disqualify a person from employment with  
3 a service provider or licensure, exemption from licensure, certification, or  
4 other operating authority as a service provider if:

5 (A) The conviction or plea of guilty or nolo contendere  
6 was for a misdemeanor offense;

7 (B) The date of the conviction or plea of guilty or nolo  
8 contendere is at least five (5) years from the date of the request for the  
9 criminal history records check; and

10 (C) The person has no criminal convictions or pleas of  
11 guilty or nolo contendere of any type or nature during the five-year period  
12 preceding the background check request; ~~and~~

13 ~~(D) The person has completed the person's term of~~  
14 ~~confinement, probation, or parole related to the conviction or plea of guilty~~  
15 ~~or nolo contendere.~~

16 (2) This section shall not disqualify a person from employment  
17 with a service provider or licensure, exemption from licensure,  
18 certification, or other operating authority as a service provider if:

19 (A) The conviction or plea of guilty or nolo contendere  
20 was for a felony offense;

21 (B) The date of the conviction or plea of guilty or nolo  
22 contendere is at least ten (10) years from the date of the background check  
23 request; and

24 (C) The individual has no criminal convictions or pleas of  
25 guilty or nolo contendere of any type or nature during the ten-year period  
26 preceding the request for a criminal history records; ~~and~~

27 ~~(D) The person has completed the person's term of~~  
28 ~~confinement, probation, or parole related to the conviction or plea of guilty~~  
29 ~~or nolo contendere.~~

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31 SECTION 3. Arkansas Code § 20-38-105, concerning exceptions to  
32 disqualification for healthcare personnel, is amended to add an additional  
33 subsection to read as follows:

34 20-38-105. Disqualification from employment – Denial or revocation –  
35 Penalties.

36 (f) Even if the person would otherwise be disqualified under this

1 section, a person shall not be disqualified from employment with a service  
2 provider or licensure, exemption from licensure, certification, or other  
3 operating authority as a service provider if the person:

4 (1) Was not disqualified on August 31, 2009; and

5 (2) Since August 31, 2009, has not been found guilty of or  
6 pleaded guilty or nolo contendere to:

7 (A) An offense listed in subsection (b) of this section;

8 (B) A similar offense in another state; or

9 (C) A similar federal offense

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11 SECTION 4. Arkansas Code § 20-38-112, concerning exclusions for the  
12 requirements for criminal background checks for healthcare personnel is  
13 amended to add two (2) additional subsections to read as follows:

14 (d) If a service provider can verify that an applicant or employee has  
15 been the subject of an employment determination described in subsection (e)  
16 of this section, the service provider is not required to conduct any further  
17 criminal history records check on the applicant or employee to determine  
18 eligibility for employment except as required under § 20-38-103(d) for  
19 continued employment.

20 (e)(1) An employment determination and the criminal history records  
21 check used to make the determination for an applicant or employee of a  
22 service provider shall be fully acceptable and transferrable upon request  
23 between the following divisions and offices of the Department of Human  
24 Services:

25 (A) The Division of Child Care and Early Childhood  
26 Education for a child care facility or church-exempt child care facility;

27 (B) The Division of Developmental Disabilities Services  
28 for an Alternative Community Services Waiver Program provider, an early  
29 intervention provider, or a nonprofit community program; and

30 (C) The Office of Long Term Care for a long term care  
31 facility licensed as an intermediate care facility for the mentally retarded  
32 or developmentally disabled.

33 (2) The divisions and office listed in subdivision (e)(1) of this  
34 section shall accept from any other division or office listed in subdivision  
35 (e)(1) of this section an employment determination and the criminal history  
36 records check used to make the determination for an applicant or employee of

1 a service provider in each instance that the following conditions are met:

2 (A) The employee is or applicant will be continuously  
3 employed by the service provider in one (1) or more of the service provider  
4 types described in subdivision (e)(1) of this section;

5 (B) The applicable service provider types in which an  
6 employee is employed or an applicant will be employed are operated and  
7 administered by the same service provider;

8 (C) The service provider maintains evidence acceptable to  
9 the licensing or certifying agency that the service provider types for which  
10 employment determinations and criminal records checks are accepted under  
11 subsection (e) of this section are operated and administered by the same  
12 service provider; and

13 (D) The service provider maintains an original or copy of  
14 the determination letter for each employee at the service provider type for  
15 which employment determinations and criminal records checks are accepted  
16 under subsection (e) of this section and at which the employee who is the  
17 subject of the determination letter is employed.

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