

1 State of Arkansas

As Engrossed: S4/3/25

2 95th General Assembly

A Bill

3 Regular Session, 2025

HOUSE BILL 1454

4
5 By: Representative Bentley

6 By: Senator Irvin

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS CONCERNING CRIMINAL HISTORY
10 RECORDS CHECKS FOR EMPLOYEES OF SERVICE PROVIDERS; TO
11 ALLOW THIRD-PARTY EMPLOYEE EVALUATION SERVICES TO
12 PERFORM CRIMINAL HISTORY RECORDS CHECKS; TO INCLUDE
13 INDEPENDENT CONTRACTORS; AND FOR OTHER PURPOSES.

Subtitle

17 TO AMEND THE LAWS CONCERNING CRIMINAL
18 HISTORY RECORDS CHECKS FOR EMPLOYEES OF
19 SERVICE PROVIDERS; TO ALLOW THIRD-PARTY
20 EMPLOYEE EVALUATION SERVICES TO PERFORM
21 CRIMINAL HISTORY RECORDS CHECKS; AND TO
22 INCLUDE INDEPENDENT CONTRACTORS.

23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code § 20-38-101 is amended to read as follows:

27 20-38-101. Definitions.

28 As used in this chapter:

29 (1) "Care" means treatment, services, assistance, education,
30 training, instruction, or supervision for which the service provider is
31 compensated either directly or indirectly;

32 (2) "Determination" means the determination made by either the
33 licensing or certifying agency or the third-party employee evaluation service
34 that a service provider, operator, applicant for employment with, or employee
35 of a service provider is or is not disqualified from licensure, exemption
36 from licensure, certification, any other operating authority, or employment



1 based on the criminal history of the service provider, operator, applicant,
2 or employee;

3 (3)(A) "Employee" means any person who:

4 (i) Has unsupervised access to clients of a service
5 provider, except as provided in subdivision (3)(B) of this section; and

6 (ii) Meets any of the following criteria:

7 (a) Provides care to clients of a service
8 provider on behalf of, under the supervision of, or by arrangement with the
9 service provider;

10 (b) Is employed by a service provider to
11 provide care to clients of the service provider;

12 (c) Is engaged as an independent contractor to
13 provide care to clients of a service provider;

14 ~~(e)~~(d) Is a temporary employee placed by an
15 employment agency with a service provider to provide care to clients of the
16 service provider; or

17 ~~(d)~~(e) Resides in an alternative living home
18 in which services are provided to individuals with developmental
19 disabilities.

20 (B) "Employee" does not include a person who:

21 (i) Is a family member of a client receiving care
22 from a service provider;

23 (ii) Is a volunteer; or

24 (iii) Works in an administrative capacity and does
25 not have unsupervised access to clients of a service provider;

26 (4) "Licensing or certifying agency" means the state agency
27 charged with licensing, exempting from licensure, certifying, or granting
28 other operating authority to a service provider;

29 (5) "National criminal history records check" means a review of
30 criminal history records maintained by the Federal Bureau of Investigation
31 based on fingerprint identification or other positive identification methods;

32 (6) "Operator" means the person signing the application of a
33 service provider for licensure, exemption from licensure, certification, or
34 any other operating authority;

35 (7) "Registry records check" means the review of one (1) or more
36 database systems maintained by a state agency that contain information

1 relative to a person's suitability for licensure, certification, exemption
2 from licensure, or any other operating authority to be a service provider or
3 for employment with a service provider to provide care;

4 (8) "Report" means a statement of the criminal history of a
5 service provider, operator, applicant for employment with, or employee of a
6 service provider issued by the Identification Bureau of the Division of
7 Arkansas State Police;

8 (9) "Service provider" means any of the following:

9 (A) An Alternative Community Services Waiver Program
10 provider certified by the Division of Developmental Disabilities Services;

11 (B) A childcare facility as defined by § 20-78-202;

12 (C) A church-exempt childcare facility as recognized under
13 § 20-78-209;

14 (D) An early intervention program provider certified by
15 the Division of Developmental Disabilities Services;

16 (E) A home- and community-based health services provider
17 certified by the Division of Provider Services and Quality Assurance;

18 (F) A home healthcare service under § 20-10-801;

19 (G) A hospice program under § 20-7-117;

20 (H) A long-term care facility as defined by § 20-10-702;

21 (I) A nonprofit community program as defined by § 20-48-
22 101;

23 (J) An entity that provides personal care services to
24 individuals;

25 (K) A long-term care facility under § 20-10-1202; or

26 (L) An entity that provides services to or houses teens
27 and youths; ~~and~~

28 (10) "State criminal history records check" means a review of
29 state criminal history records conducted by the Identification Bureau of the
30 Division of Arkansas State Police; and

31 (11) "Third-party employee evaluation service" means an
32 independent, third-party service, not associated with either the licensing or
33 certifying agency or the service provider, authorized or otherwise eligible
34 under state and federal law to perform national criminal history records
35 checks and state criminal history records checks in order to provide the
36 determination of eligibility for employment under this subchapter.

1
2 SECTION 2. Arkansas Code § 20-38-103(a)(1) and (2), concerning a
3 service provider informing applicants and employees of service providers that
4 employment is contingent on a criminal history records check, are amended to
5 read as follows:

6 (a)(1) Before making an offer of employment or engaging as an
7 independent contractor, a service provider shall inform an applicant that
8 employment is contingent on the satisfactory results of criminal history
9 records checks.

10 (2) If a service provider intends to make an offer of employment
11 to or contract with an applicant, the service provider shall conduct criminal
12 history records checks on the applicant under this section.

13
14 SECTION 3. Arkansas Code § 20-38-103(b), concerning conditionally
15 employment for applicants and employees of service providers pending a
16 criminal history records check, is amended to read as follows:

17 (b) After a service provider satisfies the regulatory requirements of
18 the appropriate licensing or certifying agency governing registry checks of
19 applicants for employment or engagement in a contract, the service provider
20 may conditionally employ or contract with an applicant pending receipt of a
21 determination from the appropriate licensing or certifying agency or from a
22 third-party employee evaluation service.

23
24 SECTION 4. Arkansas Code § 20-38-103(c)(2)(B)(iii), concerning
25 criminal history records checks for temporary employees of service providers,
26 is amended to read as follows:

27 (iii) Provide copies of the documentation to the
28 service provider, which shall be made available to the appropriate licensing
29 or certifying agency or the third-party employee evaluation service upon
30 request.

31
32 SECTION 5. Arkansas Code § 20-38-103(d) and (e), concerning criminal
33 history records checks for applicants and employees of service providers, are
34 amended to read as follows:

35 (d) A service provider shall inform employees that continued
36 employment or contractual engagement is contingent on the satisfactory

1 results of criminal history records checks and shall conduct periodic
2 criminal history records checks on all employees no less than one (1) time
3 every five (5) years.

4 (e)(1)(A) When a service provider initiates a request for a state
5 criminal history records check on an applicant for employment or contract
6 with or an employee of the service provider, the Identification Bureau of the
7 Division of Arkansas State Police shall issue within twenty-four (24) hours
8 an electronic report to the licensing or certifying agency.

9 (B) When a licensing or certifying agency submits a
10 request for a national criminal history records check on an applicant for
11 employment or contract with or an employee of the service provider, the
12 Identification Bureau of the Division of Arkansas State Police shall issue a
13 report to the licensing or certifying agency within ten (10) days after
14 receipt of the results of the national criminal history records check from
15 the Federal Bureau of Investigation.

16 (2) After receipt of a report from the Identification Bureau of
17 the Division of Arkansas State Police, the licensing or certifying agency
18 shall determine whether the applicant or employee is disqualified from
19 employment or contract with the service provider based on the criminal
20 history of the applicant or employee and shall forward its determination to
21 the service provider.

22 (3)(A)(i) If the licensing or certifying agency or the third-
23 party employee evaluation service determines that an applicant or employee is
24 disqualified from employment or engagement in a contract based on the
25 criminal history of the applicant or employee, the service provider shall
26 deny employment to the applicant or shall terminate the employment of the
27 employee.

28 (ii)(a) If the applicant or employee is
29 disqualified from employment based on the criminal history and the service
30 provider wants to employ the applicant or continue to employ the employee,
31 the service provider shall provide written notice to the licensing or
32 certifying agency or the third-party employee evaluation service of the
33 person's identity and that the service provider has determined that the
34 person is not disqualified from employment because the person satisfies the
35 criteria for a waiver under § 20-38-105(d)(3).

36 (b) After receipt of written acknowledgment

1 from the licensing or certifying agency or the third-party employee
2 evaluation service that the service provider has determined that the
3 applicant or employee is not disqualified from employment because the person
4 satisfies the criteria for a waiver under § 20-38-105(d)(3), the service
5 provider may employ the applicant or continue the employment of the employee.

6 (B) If the licensing or certifying agency or the
7 third-party employee evaluation service issues a determination that an
8 applicant or employee is not disqualified from employment or if there is no
9 criminal history on an applicant or employee, the service provider may employ
10 the applicant or continue the employment of the employee.

11
12 SECTION 6. Arkansas Code § 20-38-105(a), concerning disqualification
13 from employment with a service provider based on a criminal history records
14 check, is amended to read as follows:

15 (a)(1) Except as provided in subsection (d) of this section, the
16 licensing or certifying agency shall issue a determination that a person is
17 disqualified as a service provider, operator, or from employment or
18 engagement in a contract as an independent contractor with a service provider
19 if the person has pleaded guilty or nolo contendere to or has been found
20 guilty of:

21 (A) Any of the offenses listed in subsection (b) of this
22 section by any court in the State of Arkansas;

23 (B) Any similar offense by a court in another state; or

24 (C) Any similar offense by a federal court.

25 (2) Except as provided in subsection (d) of this section, a
26 service provider shall not knowingly employ or contract with a person and the
27 licensing or certifying agency shall not knowingly contract with, license,
28 exempt from licensure, certify, or otherwise authorize a person to be a
29 service provider if the person has pleaded guilty or nolo contendere to or
30 has been found guilty of:

31 (A) Any of the offenses listed in subsection (b) of this
32 section by any court in the State of Arkansas;

33 (B) Any similar offense by a court in another state; or

34 (C) Any similar offense by a federal court.

35
36 SECTION 7. Arkansas Code § 20-38-105(d)(1), concerning offenses that

1 do not disqualify a person from employment with a service provider based on a
2 criminal history records check, is amended to read as follows:

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

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

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

12 (C) The person has no criminal convictions or pleas of
13 guilty or nolo contendere of any type or nature during the five-year period
14 preceding the criminal history records check request.

15
16 SECTION 8. Arkansas Code § 20-38-105(d)(3), concerning non-
17 disqualifying offenses related to employment with a service provider based on
18 a criminal history records check, is amended to read as follows:

19 (3) This section does not disqualify a person from employment or
20 engagement in a contract with a service provider if:

21 (A) The conviction or plea of guilty or nolo contendere
22 was for any of the nonviolent offenses listed below:

23 (i) Theft by receiving, § 5-36-106;
24 (ii) Forgery, § 5-37-201;
25 (iii) Financial identity fraud, § 5-37-227;
26 (iv) Resisting arrest, § 5-54-103;
27 (v) Criminal impersonation in the second degree, §
28 5-37-208(b);

29 (vi) Interference with visitation, § 5-26-501;
30 (vii) Interference with court-ordered custody, § 5-
31 26-502;

32 (viii) Prostitution, § 5-70-102; and

33 (ix) Sexual solicitation, § 5-70-103;

34 (B) The service provider wants to employ or contract with
35 the person;

36 (C) The person remains in employment or under contract

1 with the same service provider;

2 (D) The person has completed probation, parole, or post-
3 release supervision, paid all court-ordered fees or fines, including
4 restitution, and fully complied with all court orders pertaining to the
5 conviction or plea;

6 (E) The person will be employed by or contracted with:

7 (i) A long-term care facility licensed by the Office
8 of Long-Term Care;

9 (ii) An intermediate care or other facility,
10 developmental day treatment clinic services provider, or group home licensed
11 or certified by the Division of Developmental Disabilities Services; or

12 (iii) A childcare facility or a church-exempt
13 childcare facility licensed by the Division of Child Care and Early Childhood
14 Education;

15 (F) Subsequent to employment, the person does not plead
16 guilty or nolo contendere to or is found guilty of any offense in subsection
17 (b) of this section; and

18 (G) The person does not have a true or founded report of
19 child maltreatment or adult maltreatment in a central registry.

20
21 SECTION 9. Arkansas Code § 20-38-105(e) and (f), concerning offenses
22 that do not disqualify a person from employment with a service provider based
23 on a criminal history records check, are amended to read as follows:

24 (e) A person shall not be disqualified from employment or engagement
25 in a contract with a service provider or licensure, exemption from licensure,
26 certification, or other operating authority as a service provider if the
27 person has been found guilty of or has pleaded guilty or nolo contendere to a
28 misdemeanor offense not listed in subsection (b) of this section, a similar
29 misdemeanor offense in another state, or a similar federal misdemeanor
30 offense.

31 (f) Even if the person would otherwise be disqualified under this
32 section, a person shall not be disqualified from employment or engagement in
33 a contract with a service provider or licensure, exemption from licensure,
34 certification, or other operating authority as a service provider if the
35 person:

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

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

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

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

5 (C) A similar federal offense.
6

7 SECTION 10. Arkansas Code § 20-38-106 is amended to read as follows:
8 20-38-106. Evidence of criminal history records checks.

9 (a) A service provider shall maintain on file, subject to inspection
10 by the Arkansas Crime Information Center, the Identification Bureau of the
11 Division of Arkansas State Police, or the licensing or certifying agency
12 evidence that criminal history records checks have been completed on all
13 operators, applicants for employment, and employees of the service provider
14 and evidence that all operators, applicants for employment or engagement in a
15 contract, and employees of the service provider have been approved or
16 disqualified in accordance with the rules of the appropriate licensing or
17 certifying agency.

18 (b) If a service provider employs an applicant or continues the
19 employment of or contract with an employee who satisfied the criteria for a
20 waiver under § 20-38-105(d)(3), the service provider shall maintain
21 documentation that the person met the criteria for the waiver, including the
22 written acknowledgment by the licensing or certifying authority.
23

24 SECTION 11. Arkansas Code § 20-38-110 is amended to read as follows:
25 20-38-110. Confidentiality.

26 (a) All reports obtained under this subchapter are confidential and
27 are restricted to the exclusive use of the Arkansas Crime Information Center,
28 the Identification Bureau of the Department of Arkansas State Police, and the
29 licensing or certifying agency or the third-party employee evaluation
30 service.

31 (b) The information contained in reports shall not be released or
32 otherwise disclosed to any other person or agency except by court order and
33 is specifically exempt from disclosure under the Freedom of Information Act
34 of 1967, § 25-19-101 et seq., except to the licensing or certifying agency or
35 the third-party employee evaluation service.
36

1 SECTION 12. Arkansas Code § 20-38-112(e)(2)(C) and (D), concerning
2 exclusions for criminal history records checks and completion of a criminal
3 history records checks, are amended to read as follows:

4 (C) The service provider maintains evidence acceptable to
5 the licensing or certifying agency that the service provider types for which
6 employment or engagement in a contract determinations and criminal history
7 records checks are accepted under this subsection are operated and
8 administered by the same service provider; and

9 (D) The service provider maintains an original or copy of
10 the determination letter for each employee at the service provider type for
11 which employment or engagement in a contract determinations and criminal
12 history records checks are accepted under this subsection and at which the
13 employee who is the subject of the determination letter is employed.

14
15 */s/Bentley*
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36