

## The Child Welfare Agency Licensing Act

### **9-28-401. Short title.**

#### Statutes

This subchapter shall be known as the "The Child Welfare Agency Licensing Act."

History. Acts 1997, No. 1041, § 1.

#### Research references

#### RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

### **9-28-402. Definitions.**

#### Statutes

As used in this subchapter:

- (1) "Adoptive home" means a household of one (1) or more persons which has been approved by a licensed child placement agency to accept a child for adoption;
- (2) "Adverse action" means any petition by the Division of Children and Family Services of the Department of Health and Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:
  - (A) Revocation of license;
  - (B) Suspension of license;
  - (C) Conversion of license from regular status to provisional status;
  - (D) Imposition of a civil penalty;
  - (E) Denial of application; or
  - (F) Reduction of licensed capacity;
- (3) "Alternative compliance" means a request for approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a regulation provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the regulation;
- (4) "Board" means the Child Welfare Agency Review Board;
- (5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:
  - (A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Department of Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child welfare agency" means any person, corporation, partnership, voluntary association or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves; or

(C) Plans for or assists in the placements described in subdivision (a)(6)(B) of this section;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, who engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(8)(A) "Class A violation" means violations of essential standards, including those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(9) "Class B violation" means any other violations of standards that are not Class A violations;

(10) "Division" means the division within the Department of Health and Human Services that shall be designated by the Director of the Department of Health and Human Services to administer this subchapter;

(11) "Emergency child care" means any residential child care facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, who otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States government;

(B) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities. In order to maintain exempt status, the state child

welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards. Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Department of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Arkansas State Hospital Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

(G) Any facility licensed as a family home pursuant to § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services of the Department of Health and Human Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and which complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services of the Department of Health and Human Services; and

(M) Any developmental disabilities services waiver provider licensed under § 20-48-208 or § 20-48-601 et seq.;

(13) "Foster home" means a private residence of one (1) or more family members that receives from a child placement agency any minor child who is unattended by a parent or guardian in order to provide care, training, education, custody, or supervision on a twenty-four-hour basis, not to include adoptive homes;

(14) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(15) "Minimum standards" means those rules and regulations as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(16) "Provisional foster home" means a foster home opened for no more than six (6) months by the division for a relative of a child in the custody of the Division of Children and Family Services after it:

(A) Conducts a health and safety check, including a central registry check and a criminal background check or a check with local law enforcement, of the relative's home;

(B) Performs a visual inspection of the home of the relative to verify that the relative will meet the standards for opening a regular foster home;

(17) "Psychiatric residential treatment facility" means a residential child care facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally

disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(18) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(19) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(20) "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated minors;

(21) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency. Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(22) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children which meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; and

(23) "Unrelated minor" means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction.

History. Acts 1997, No. 1041, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1.

#### Publisher notes

A.C.R.C. Notes. Acts 1995, No. 1162, § 3, provided: "All powers vested in the State Hospital Board and Arkansas Youth Services Board are hereby transferred by type one transfer to the DHS State Institutional System Board, and any reference to the State Hospital Board or the Arkansas Youth Services Board contained in the Arkansas Code of 1987 Annotated, shall be deemed to refer to the DHS State Institutional System Board." Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, Nos. 1766 and 2234. Subdivisions (22) and (23) of this section were also amended by Acts 2005, No. 874, § 2, to read as follows: "(22) 'Provisional foster home' means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative of a child in the custody of the division after the division conducts: (A) A health and safety check, including a central registry check and a criminal background check or check with local law enforcement, on the relative and the relative's home; and (B) A visual inspection of the home of the relative;

"(23) 'Relative' means a person within the fifth degree of kinship by virtue of blood or adoption."

Amendments. The 2005 amendment by No. 1766 added "or" in (2)(E); inserted present (12)(L), (12)(M), (16) and (18); and redesignated the remaining subdivisions accordingly.

**9-28-403. Child Welfare Agency Review Board - Creation - Authority.**

Statutes

(a)(1) There is created the Child Welfare Agency Review Board to serve as the administrative body to carry out the provisions of this subchapter.

(2) The board shall have the authority to promulgate rules and regulations to enforce the provisions of this subchapter.

(b) The board may also identify and implement alternative methods of regulation and enforcement which may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of "child welfare agency", as may be required by changes in the types of child welfare programs that may occur, and to promulgate separate regulations for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and

(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c)(1) The division is designated as the governmental agency charged with the enforcement of the provisions of this subchapter.

(2) Only the division, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except where otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association or other entity shall be found to operate or assist in the operation of a child welfare agency which has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in the jurisdiction in which the child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association or other entity from operating the child welfare agency.

(e)(1) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought pursuant to this subchapter.

(2) The Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence shall also apply to adverse action hearings.

History. Acts 1997, No. 1041, § 3.

**9-28-404. Child Welfare Agency Review Board - Composition.**

Statute text

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

- (1) The director of the division or his or her designee;
- (2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;
- (3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;
- (4) Two (2) representatives from licensed residential child care facilities;
- (5) One (1) representative from a licensed psychiatric residential treatment facility;
- (6) One (1) representative from a licensed emergency shelter; and
- (7) One (1) representative from the public at-large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the division.

(d) The members of the board shall select a chair from among its voting membership.

History. Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2.

Publisher notes

Amendments. The 2001 amendment, inserted "his or her" in (a)(1); substituted "his or her designee, as a nonvoting ex officio member" for "his designee" in (a)(8); and substituted present (d) for the former, which read: "The division representative on the board shall serve as chair and shall only vote in the event of a tie."

The 2003 amendment deleted (a)(8) and made related changes.

Cross References. Compensation of state boards, § 25-16-901 et seq.

**9-28-405. Child Welfare Agency Review Board - Duties.**

Statutes

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules and regulations setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure

pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The board shall have exclusive authority to promulgate rules and regulations that:

- (1) Promote the health, safety, and welfare of children in the care of a child welfare agency;
  - (2) Promote safe and healthy physical facilities;
  - (3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;
  - (4) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;
  - (5) Ensure adequate and healthy food service;
  - (6) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;
  - (7) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;
  - (8) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;
  - (9) Require the compilation of reports and making those reports available to the Division of Youth Services of the Department of Health and Human Services when the board determines it is necessary for compliance determination or data compilation;
  - (10) Ensure that a child placement agency:
    - (A) Treats clients seeking or receiving services in a professional manner, as defined by regulations promulgated pursuant to this section; and
    - (B) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Health and Human Services where complaints can be lodged;
  - (11) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and
  - (12) Establish rules governing retention of licensing records maintained by the division.
- (d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:
- (A) Interfering with the religious teaching or instruction offered by a child welfare agency;

- (B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;
  - (C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;
  - (D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or
  - (E) Prohibiting the use of corporal discipline.
- (2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the division in writing of the belief and the specific rule that violates the belief.
- (ii) The rule shall be presumptively invalid as applied to that child welfare agency.
- (B)(i) The division may then file a petition before the board seeking to enforce the rule.
- (ii) The division shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.
- (e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.
- (f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.
- (B) The board may deny, suspend, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:
- (i) Fails to comply with the provisions of this subchapter or any published rule or regulation of the board relating to child welfare agencies;
  - (ii) Furnishes or makes any statement or report to the division that is false or misleading;
  - (iii) Refuses or fails to submit required reports or to make available to the division any records required by it in making an investigation of the agency for licensing purposes;
  - (iv) Refuses or fails to submit to an investigation or to reasonable inspection by the division;
  - (v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;
  - (vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by regulations promulgated pursuant to this section;
  - (vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or
  - (viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.
- (2) Any denial of application or revocation or suspension of a license shall be effective when made.
- (g) The board shall review the qualifications of persons required to have background checks under this subchapter.



(h)(1) The board may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or regulation.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the division's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) Nothing in this section shall prevent the division or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a postdeprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee a written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record which constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules and regulations promulgated pursuant to this section and all public comment received in writing by the division in response shall be made available for review by the Senate Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule or regulation promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in the Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person or facility providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

- (o)(1) The Department of Health and Human Services shall maintain a website accessible to the general public that contains information on child placement agencies.
- (2) The website shall contain:
- (A) The name, phone number, and address of all child placement agencies licensed by the board;
- (B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and
- (C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

History. Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2.

#### Publisher notes

Amendments. The 2005 amendment by No. 2225 added (a)(3), (c)(10) and (c)(11); inserted "or issue letters of reprimand or caution to a child welfare agency" in (f)(1)(B); added (f)(1)(B)(vi)-(viii); added (i)(1)(B); substituted "five hundred dollars (\$500)" for "one hundred dollars (\$100)" in (i)(3)(A)(i); in (i)(3)(A)(ii), inserted "civil penalties of" and substituted "two thousand five hundred dollars (\$2,500)" for "five hundred dollars (\$500)"; substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in (i)(3)(B)(i); in (i)(3)(B)(ii), inserted "civil penalties" and substituted "five hundred dollars (\$500)" for "two hundred fifty dollars (\$250)"; added (o); and made minor stylistic changes.

The 2005 amendment by No. 2234 inserted "have exclusive authority" in (c); substituted "under this subchapter" for "thereunder" in (c)(6); added (c)(10) [now (c)(12)]; and made related changes.

#### Case notes

#### CASE NOTES

#### Scope of Authority.

The Child Agency Review Board violated the separation of powers doctrine and exceeded the authority given to it by the Arkansas General Assembly when it promulgated § 200.3.2 of the Minimum Licensing Standards for Child Welfare Agencies, which prohibited persons with adult homosexual members in their household from becoming foster parents; although the Board was required to promulgate regulations to protect the health, safety, and welfare of foster children, there was no evidence that living with an adult homosexual placed foster children in danger, and the Board was not required to issue regulations based upon moral standards or beliefs. *Dep't of Human Servs. v. Howard*, - Ark. - , - S.W.3d - , 2006 Ark. LEXIS 418 (June 29, 2006).

#### **9-28-406. Division enforcement duties.**

Statutes

(a) The division shall advise the Child Welfare Agency Review Board regarding proposed rules and regulations. The division shall obtain comments from the board prior to initiating the rule promulgation process.

(b)(1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection and investigation are necessary to determine whether the child welfare agency will be or is being operated in accordance with this subchapter and the rules and regulations promulgated by the board.

(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c)(1) The division or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d)(1) The division shall assist licensees and applicants in complying with published rules and regulations by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter. The division must respond to the request in writing within twenty (20) business days of receiving the request. If the division's response is that the subject of the request would not comply with published standards, the division shall suggest an alternative practice which in its opinion would comply with published standards when it is possible to do so; and

(B) A written opinion required in subdivision (d)(2)(A) of this section is binding on the division as a declaratory order if the applicant or licensee has acted in reliance on the opinion. Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e)(1) The division shall issue corrective action notices following inspections of child welfare agencies as provided in subdivision (e)(1) of this section.

(2) If the division finds that a child welfare agency has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or welfare of the persons served by the program, the division shall issue a corrective action notice to the child welfare agency. The corrective action notice must require the licensee to outline a corrective action plan. The division's corrective action notice shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3)(A) If the child welfare agency believes that the contents of the division's corrective action notice are in error, the welfare agency may ask licensing authorities to reconsider the parts of the corrective action notice that are alleged to be in error. The request for reconsideration must be in writing, delivered by certified mail, specify the parts of the

corrective action notice that are alleged to be in error, explain why they are in error, and include documentation to support the allegation of error.

(B) The division shall render a decision on the request for reconsideration within fifteen (15) working days after the date the request for reconsideration was received. The licensee's request for reconsideration and supporting documentation shall be retained by the division and made a part of the licensee's record.

(4) If upon reinspection, the division finds that the licensee has corrected the violation or violations specified in the corrective action notice, the division employee shall indicate this correction and the date the correction was verified in the licensee's file. If upon reinspection, the division finds that the licensee has not corrected the violations specified in the corrective action order within the required time frame, the division may in its discretion petition the board to impose appropriate adverse action against the licensee. In the case of an applicant for a license, if the applicant has not corrected the violations in a previously issued corrective action notice, the division may recommend denial of the application for a child welfare agency license.

History. Acts 1997, No. 1041, § 6.

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

Statute text

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

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

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

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

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

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

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

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

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

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

(a) The Commission on Accreditation of Rehabilitation Facilities;

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

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

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

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

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

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

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

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

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

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

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

(2) The division shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

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

- (B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;
  - (C) A complete personnel list with verifications of qualifications and experience;
  - (D) Substantiation of the financial soundness of the agency's operation; and
  - (E) A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care.
- (e)(1) The board shall issue a regular license which shall be effective until adverse action is taken on the license if the board finds that:
- (A) The applicant for a child welfare agency license meets all licensing requirements; or
  - (B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.
- (2) The board may issue a provisional license which shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined. The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.
- (f)(1) A license to operate a child welfare agency shall apply only to the address and location stated on the application and license issued, and it shall be transferable from one (1) holder of the license to another or from one (1) place to another.
- (2) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures must be followed:
- (A) The seller shall notify the division of the sale at least thirty (30) days prior to the completed sale;
  - (B) The seller shall remain responsible for the operation of the child welfare agency until such time as the agency is closed or a license is issued to the buyer;
  - (C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations or deficiencies occurring before the transfer of a license to the buyer;
  - (D) The buyer shall be subject to any corrective action notices to which the seller was subject; and
  - (E) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the office and regarding obtaining any permits from the Health Services Permit Agency or the commission shall apply in their entirety to the new owner of the child welfare agency.
- (g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:
- (1) The full legal name of the entity holding the license, including the business name, if different;
  - (2) The address of the child welfare agency;
  - (3) The effective date and expiration date of the license;
  - (4) The type of child welfare agency the licensee is authorized to operate;

- (5) The maximum number and ages of children that may receive services from the agency, if the agency is not a child placement agency; and
  - (6) The status of the license, whether regular or provisional; and
  - (7) Any special conditions or limitations of the license.
- (h)(1) Reports, correspondence, memoranda, case histories, or other materials compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:
- (A) To the director as required by regulation;
  - (B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;
  - (C) To multidisciplinary teams under § 12-12-502(b);
  - (D)(i) To the child's parent, guardian, or custodian.
  - (ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child;
  - (iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;
  - (E) To the child;
  - (F)(i) To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.
  - (ii) "Health care providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;
  - (G) To school personnel and day care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;
  - (H)(i) To foster parents, the foster care record for foster children currently placed in their home.
  - (ii) However, information about the parents or guardians and any siblings not in the foster home shall not be released;
  - (I)(i) To the board.
  - (ii) However, at any board meeting no information which identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;
  - (J) To the Division of Youth Services of the Department of Human Services, including child welfare agency licensing specialists;
  - (K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct the audit or activity;
  - (L) Upon presentation of an order of appointment, to a court-appointed special advocate;
  - (M) To the attorney ad litem for the child;
  - (N) For law enforcement or the prosecuting attorney at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;



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

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

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

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

(S)(i) To individual federal and state representatives and senators and their staff members with no redisclosure of information.

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

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

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

(A) To the foster parents or adoptive parents;

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

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

(D) To the board;

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

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

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

(H)(i) To individual federal and state representatives and senators and their staff members with no redisclosure of information.

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

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

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

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

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

History. Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4.

Publisher notes

A.C.R.C. Notes. Acts 2005, No. 888, § 1, provided: "Child welfare agencies operating as residential facilities providing treatment to children with co-occurring substance abuse and psychiatric disorders are covered by the amendment of Arkansas Code §§ 9-28-407(a) and Arkansas Code § 20-8-107(c) by Act 1285 of 2003 so long as they were providing such care on or before March 1, 2003, and also meet the requirements of this act."

Amendments. The 1999 amendment rewrote (a).

The 2001 amendment by No. 1211 redesignated former (h) as present (h)(1); in present (h)(1), inserted "including both foster care and protective services records" and made related changes, and added "to the extent permitted by federal law and only" to the end; redesignated former (h)(1) as present (h)(1)(A); redesignated former (h)(2) as present (h)(1)(B), added "For adoptive placements" to the beginning and made related changes; redesignated former (h)(3) as present (h)(1)(C) and made minor punctuation changes; and added (h)(1) through (h)(3).

The 2001 amendment by No. 1800 redesignated former (a)(3)(1) and (a)(3)(2) as present (a)(3)(A) and (a)(3)(B); and in present (a)(3)(B), inserted "Permit" twice.

The 2003 amendment by No. 1157 added (h)(1)(D)(iii); in (h)(1)(S)(i), inserted "and their staff members"; added (h)(1)(T); in (h)(2)(E), substituted "Children and Family Services of the Department of Human Services" for "Youth Services"; and added (2)(G) and (2)(H).

The 2003 amendment by No. 1166 substituted "circuit" for "juvenile" in (h)(1)(O).

The 2003 amendment by No. 1285, in (a)(3), substituted "March 1, 2003" for "1999" and deleted "the requirements of law" from the end; in (a)(3)(B), inserted "to operate at the capacity licensed by the board as of March 1, 2003; and"; added (a)(3)(C) and (a)(4); and made minor stylistic changes.

The 2005 amendment by No. 888 added present (a)(5).

The 2005 amendment by No. 1766 added (h)(2)(I) and made related changes.

The 2005 amendment by No. 2234 deleted "(8)" following "§ 20-10-101" in (a)(2); in (a)(3), inserted "capacity" and "whether held by the original license or by a successor in interest to the original licensee"; in (b), inserted the subdivision designations and substituted "from licensure under this subchapter" for "therefrom" in present (b)(1); inserted the subdivision designations in (c); substituted "division" for "Division of Medical Services" throughout (c) and (d); in (d), inserted the (1) and (2) designations; redesignated former (d)(1)-(5) as present (d)(2)(A)-(E); and, in present (d)(2), substituted "shall" for "must"; and rewrote (f).

Research references

RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24  
UALR L.J. 483.

**9-28-408. Church-related exemption.**

Statutes

(a) Any church or group of churches exempt from the state income tax levied by § 26-51-101 et seq. when operating a child welfare agency shall be exempt from obtaining a license to operate the facility by the receipt by the Child Welfare Agency Review Board of written request therefor, together with the written verifications required in subsection (b) of this section. A written request shall be made by those churches desiring exemption to the board, which is mandated under the authority of this subchapter to license all child welfare agencies.

(b)(1) In order to maintain an exempt status, the child welfare agency shall state every two (2) years in written form signed by the persons in charge that the agency has met the fire, safety, and health inspections and is in substantial compliance with published standards that similar nonexempt child welfare agencies are required to meet.

(2) Visits to review and advise exempt agencies shall be made as deemed necessary by the board to verify and maintain substantial compliance with all published standards for nonexempt agencies.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child are not endangered.

(c)(1) Any questions of substantial compliance with the published standards shall be reviewed by the board.

(2) Final administrative actions of the board shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) As used in this section, the term "substantial compliance" and the term "is being operated in accordance with this subchapter" shall each mean that a church-operated exempt or a nonexempt child welfare agency is being operated within the minimum requirements for substantial compliance as promulgated by the board. It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child welfare agencies.

History. Acts 1997, No. 1041, § 8.

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

Statute text

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

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

- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all household members age ten (10) years and older;
- (D) An adoptive parent and all household members age ten (10) years and older;
- (E) An owner having direct and unsupervised contact with children; and
- (F) A member of the agency's board of directors having direct and unsupervised contact with children.

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

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

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

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

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

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all household members age sixteen (16) years and older;
- (D) An owner having direct and unsupervised contact with children; and
- (E) A member of the agency's board of directors having direct and unsupervised contact with children.

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

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

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

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

(c)(1) In compliance with federal law and regulations and with policy and procedures promulgated by the board, each of the following persons in a child welfare agency who

has not lived in Arkansas continuously for the past six (6) years shall be checked with the Federal Bureau of Investigation for convictions of the offenses listed in this subchapter:

- (A) An employee having direct and unsupervised contact with children;
- (B) A volunteer having direct and unsupervised contact with children;
- (C) A foster parent and all family members age sixteen (16) years and older;
- (D) An owner having direct and unsupervised contact with children; and
- (E) A member of the agency's board of directors having direct and unsupervised contact with children.

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

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

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

- (A) Certification that the subject of the check consents to the completion of the check;
- (B) Certification that the subject of the check has not been convicted of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;
- (C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the board with respect to his or her employment status or licensing status;
- (D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check which indicates that the subject of the check has been convicted of, or is under pending indictment for, a crime listed in this subchapter; and
- (E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. 92-544.

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

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

(4) In the event a legible set of fingerprints as determined by the Department of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of three (3) attempts by qualified law enforcement personnel, the board shall determine

eligibility based upon a name check by the Department of Arkansas State Police and the Federal Bureau of Investigation.

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

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

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

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

(e)(1) Except as provided in subdivisions (d)(2) or (h)(1) of this section, no person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section shall be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to, or has 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 unless the conviction was vacated or reversed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (S) Interference with custody as prohibited in § 5-26-502;
  - (T) Engaging in conduct with respect to controlled substances as prohibited in § 5-64-401;
  - (U) Distribution to minors as prohibited in § 5-64-406;
  - (V) Public display of obscenity as prohibited in § 5-68-205;
  - (W) Prostitution as prohibited in § 5-70-102;
  - (X) Promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting prostitution in the third degree as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;
  - (Y) Computer child pornography as prohibited in § 5-27-603;
  - (Z) Computer exploitation of a child in the first degree as prohibited in § 5-27-605(a);
  - (AA) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this section;
  - (BB) Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude; and
  - (CC) Any former or future law of this or any other state or of the federal government which is substantially equivalent to one (1) of the aforementioned offenses.
- (2)(A) Any person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be absolutely disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency during the period of his or her confinement, probation, or parole supervision.
- (B) Except as provided in subdivision (h)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section, unless the conviction is vacated or reversed, shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision. This presumption can be rebutted in the following manner:
- (i)(a) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person.
    - (b) The applicant shall bear the burden of making such a showing; and
  - (ii) The board in its discretion may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having been convicted of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility. In making this determination, the board shall consider the following factors:
    - (a) The nature and severity of the crime;
    - (b) The consequences of the crime;
    - (c) The number and frequency of crimes;

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

- (1) The age and vulnerability of victims of the crime;
- (2) The harm suffered by the victim; and
- (3) The similarity between the victim and persons served by a child welfare agency;
  - (e) The time elapsed without a repeat of the same or similar event;
  - (f) Documentation of successful completion of training or rehabilitation pertinent to the incident; and
  - (g) Any other information that bears on the applicant's ability to care for children or any other relevant information.

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

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

- (A) Child abuse or neglect;
- (B) Spousal abuse;
- (C) A crime against children, including child pornography; or
- (D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

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

- (A) Child abuse or neglect;
- (B) Spousal abuse;
- (C) A crime against children, including child pornography; or
- (D) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

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

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

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

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

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



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

History. Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1.

#### Publisher notes

Amendments. The 1999 amendment added (f) and (g).

The 2001 amendment rewrote the section.

The 2003 amendment added present (e)(1)(Y) and (e)(1)(Z) and redesignated former (e)(1)(Y) through (e)(1)(AA) as present (e)(1)(AA) through (e)(1)(CC).

The 2005 amendment by No. 1766, in (e)(1), substituted "subdivisions (d)(2) or (h)(1)" for "subdivision (d)(2)" and inserted "unless the conviction was vacated or reversed"; substituted "degree" for "degrees" in (e)(1)(F); inserted "unless the conviction is vacated or reversed" in (e)(2)(A); in (e)(2)(B), inserted "Except as provided in subdivision (h)(1) of this section," and "unless the conviction is vacated or reversed"; inserted the (e)(2)(B)(i)(a) and (b) and (e)(2)(B)(ii) designations; deleted "served by the facility and is therefore qualified to serve in a child welfare agency" in present (e)(2)(B)(i)(a); substituted "to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency" for "to serve in a child welfare agency" in (e)(2)(B)(ii); substituted "any person" for "persons served by a child welfare agency" in (e)(2)(B)(ii)(d); added "and" at the end of (e)(2)(B)(ii)(d)(2); substituted "from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under" for "serving in a child welfare agency pursuant to" in (e)(2)(C); and added (h).

The 2005 amendment by No. 1923 substituted "subdivisions (d)(2) or (h)(1)" for "subdivision (d)(2)" in (e)(1); added "and" at the end of (e)(1)(BB); inserted "Except as provided in subdivision (h)(1) of this section" in (e)(2)(B); and added (h).

U.S. Code. Pub. L. 92-544, referred to in this section, is Act Oct. 25, 1972, 86 Stat. 1109. See 42 U.S.C. § 5119a.

#### Research references

RESEARCH REFERENCES

UALR L.J.

Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 UALR L.J. 361.

Case notes

CASE NOTES

Misconduct.

Although employee was discharged from his position at a residential facility for the psychiatric care of children because a central registry showed a report of child maltreatment, the listing demonstrated no wrongful intent or evil design such as would constitute misconduct under § 11-10-514(a). West v. Dir., Empl. Sec. Dep't, - Ark. App. -, - S.W.3d -, 2006 Ark. App. LEXIS 201 (Mar. 8, 2006).

**9-28-410. Foster care placements.**

Statutes

(a) The policy of the State of Arkansas is that children in the custody of the Department of Health and Human Services should have stable placements.

(b)(1) To reduce the number of placements of children in foster care, if a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services of the Department of Health and Human Services within forty-eight (48) hours to discuss what services or assistance may be needed to stabilize the placement.

(2) The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the child's placement.

(3) If the placement cannot be stabilized, then the foster parent shall continue to provide for the foster child until an appropriate alternative placement is located, but this shall not be longer than five (5) business days.

(c)(1) Other changes in placement shall be made only after notification of the:

(A) Foster child;

(B) Foster parent or parents;

(C) Child's attorney ad litem;

(D) Child's birth parents; and

(E) Court having jurisdiction over the child.

(2) The notices shall:

(A) Be sent in writing two (2) weeks prior to the proposed change;

- (B) Specify reasons for the proposed change;
  - (C) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and
  - (D) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist in challenging the change.
- (d)(1) Exceptions to the advance notice requirement shall be made if the child's health or welfare would be endangered by delaying a change in placement.
- (2) Within twenty-four (24) hours of the change in placement the department shall:
- (A) Notify the birth parent of the change;
  - (B) Notify the child's attorney ad litem of the change; and
  - (C) Provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.
- (3) Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem for the specific reasons justifying the change of placement without advance notice.
- (e)(1) If an agent, employee, or contractor of the department fails to comply with this section, then an action for violation of this section may be filed by any party to the action against the person who failed to comply with this section, with the assessment of punishment to be determined by the court.
- (2) If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section.
- (f) All division caseworkers, supervisors, and area managers shall have at least six (6) hours of annual training on separation and placement issues, as well as on issues relating to the grief and loss children experience in foster care with multiple placements.

History. Acts 1999, No. 1363, § 1; 2003, No. 1054, § 1; 2005, No. 1191, § 6.

#### Publisher notes

Amendments. The 2003 amendment rewrote the introductory language of (b)(2); and added (b)(2)(A) through (C), (b)(3) and (c).

The 2005 amendment redesignated former (a)(1), (a)(2), (b) and (c) as present (a), (c), (d) and (e) and made related changes; added present (b) and (f); inserted "Other" at the beginning of present (c)(1); substituted "placement provider" for "institution" in (c)(2)(C); substituted "attorney" for "guardian" in present (c)(2)(D); and inserted "and telephone number" and "home or placement" in present (d)(2)(C).

#### Research references

#### RESEARCH REFERENCES

#### UALR L.J.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Changes in Placement of Foster Children, 26 UALR L.J. 411.

**9-28-411. Foster children and educational issues.**

Statutes

(a) The Department of Health and Human Services and the local school districts shall work together for the best interest of any child placed in the custody of the department.

(b) By the next business day after the department exercises a seventy-two-hour hold on a child or a court places custody of a child with the department, the department shall inform the child's current school regardless of whether the child remains in the current school that:

(1) The department has exercised a seventy-two-hour hold on the child; or

(2) The court has placed custody of the child with the department.

(c) By the next business day after a foster child transfers to a new placement, the department shall notify the child's current school that the foster child has transferred to a new placement.

(d) By the next business day after the department comes to reasonably believe that a foster child has experienced a traumatic event, the department may notify the child's school counselor that the department reasonably believes that the foster child has experienced a traumatic event.

(e) By the next business day after the department knows through an investigation or any ongoing protective services case that a foster child has experienced a traumatic event, the department may notify the child's school counselor of the traumatic event that the department has knowledge of through an investigation or an ongoing protective services case.

(f) When appropriate, the school counselor may share with the principal and the child's teachers any information reported to the counselor under subsection (d) or (e) of this section.

(g)(1) For a child in the custody of the department, the department or its designee, who may be a foster parent, shall be the decision maker for all general educational matters for the child, subject to limitation only by the court having jurisdiction of the custody matter.

(2) For education matters under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a foster parent may be the decision maker for a child in the custody of the department.

History. Acts 2005, No. 1961, § 1.