

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

HOUSE BILL 1919

4  
5 By: Representative Dees  
6  
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## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE CHILD WELFARE AGENCY LICENSING  
10 ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO AMEND THE CHILD WELFARE AGENCY  
14 LICENSING ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code 9-28-407(h), concerning licenses required and  
21 issued by the Child Welfare Agency Review Board, is amended to read as  
22 follows:

23 (h) (1) Reports, correspondence, memoranda, case histories, or other  
24 materials compiled or received by a licensee or a state agency engaged in  
25 placing a child, including both foster care and protective services records,  
26 shall be confidential and shall not be released or otherwise made available,  
27 except to the extent permitted by federal law and only:

28 ~~(1)(A)~~ To the director as required by regulation;

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

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

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

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

36 (E) To the child;

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

4                   (ii) Health care providers include doctors, nurses,  
 5 emergency medical technicians, counselors, therapists, mental health  
 6 professionals, and dentists;

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

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

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

14                  (I)(i) To the Child Welfare Agency Review Board.

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

19                  (J) To the Division of Children and Family Services,  
 20 including child welfare agency licensing specialists;

21                  (K) Any audit or similar activity conducted in connection  
 22 with the administration of any such plan or program by any governmental  
 23 agency which is authorized by law to conduct such audit or activity;

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

26                  (M) To the Attorney Ad Litem for the child;

27                  (N) Law enforcement or the prosecuting attorney at the  
 28 discretion of the licensee or state agency and if deemed to be in the best  
 29 interest of the child;

30                  (O) To Juvenile Court, as provided for in the Arkansas  
 31 Juvenile Code;

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

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

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

4 (S)(i) To individual federal and state representatives and  
5 senators with no redisclosure of information.

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

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

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

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

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

16 (D) To the Child Welfare Agency Review Board;

17 (E) To the Division of Children and Family Services,  
18 including child welfare agency licensing specialists; or

19 (F) To law enforcement or the prosecuting attorney, upon  
20 request.

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

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

26  
27 SECTION 2. Arkansas Code is amended to read as follows:

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

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

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

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

3 (C) Foster parents and all household members age ten (10)  
4 years and older;

5 (D) Adoptive parents ~~residing in Arkansas~~ and all  
6 household members age ten (10) years and older;

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

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

11 (2) The Child Welfare Agency Review Board shall have the  
12 authority to deny a license or church-operated exemption to any applicant  
13 found to have any record of founded child maltreatment in the official record  
14 of the Arkansas Child Maltreatment Central Registry.

15 (3) Any person required to be checked under this section who is  
16 found to have any record of child maltreatment in the official record of the  
17 Arkansas Child Maltreatment Central Registry shall be reviewed by the owner  
18 or operator of the facility in consultation with the board to determine  
19 appropriate corrective action measures, which would indicate, but are not  
20 limited to training, probationary employment, or nonselection for employment.  
21 The Child Welfare Agency Review Board shall also have the authority to deny a  
22 license or church-operated exemption to an applicant who continues to employ  
23 a person with any record of founded child maltreatment.

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

29 (b)(1) The following persons in a child welfare agency who have lived  
30 in Arkansas continuously for six (6) or more years shall be checked with the  
31 Identification Bureau of the Arkansas State Police for convictions of the  
32 offenses listed in this subchapter, in compliance with policy and procedures  
33 promulgated by the Child Welfare Agency Review Board:

34 (A) Employees having direct and unsupervised contact with  
35 children;

36 (B) Volunteers having direct and unsupervised contact with

1 children;

2 (C) Foster parents and all household members age sixteen  
3 (16) years and older;

4 (D) Owners having direct and unsupervised contact with  
5 children;

6 (E) Members of the agency's board of directors having  
7 direct and unsupervised contact with children.

8 (2) The owner or operator of a child welfare agency shall  
9 maintain on file, subject to inspection by the board, evidence that Arkansas  
10 State Police criminal records checks have been initiated on all persons  
11 required to be checked, and the results of the checks. Failure to maintain  
12 that evidence on file will be prima facie grounds to revoke the license or  
13 church-operated exemption of the owner or operator of the child welfare  
14 agency.

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

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

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

28 (A) Employees having direct and unsupervised contact with  
29 children;

30 (B) Volunteers having direct and unsupervised contact with  
31 children;

32 (C) Foster parents and all family members age sixteen (16)  
33 years and older;

34 (D) Owners having direct and unsupervised contact with  
35 children;

36 (E) Members of the agency's board of directors having

1 direct and unsupervised contact with children.

2 (2) The owner or operator of a child welfare agency shall  
3 maintain on file, subject to inspection by the board, evidence that the  
4 Federal Bureau of Investigation's criminal records checks have been initiated  
5 on all persons required to be checked, and the results of the checks. Failure  
6 to maintain that evidence on file will be prima facie grounds to revoke the  
7 license or church-operated exemption of the owner or operator of the child  
8 welfare agency.

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

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

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

19 (C) Notification that the subject of the check may  
20 challenge the accuracy and completeness of any information in any such report  
21 and obtain a prompt determination as to the validity of such challenge before  
22 a final determination is made by the Child Welfare Agency Review Board with  
23 respect to their employment status or licensing status;

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

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

32 (2) The owner or operator of the child welfare agency shall  
33 submit the criminal records check form to the Identification Bureau of the  
34 Department of Arkansas State Police for processing within ten (10) days of  
35 hiring the employee, who shall remain under conditional employment until the  
36 Arkansas Child Abuse Central Registry check and criminal records checks

1 required under this subchapter are completed.

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

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

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

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

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

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

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

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

34 (B) Murder in the first and second degrees as prohibited  
35 in §§ 5-10-102 and 5-10-103;

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

- 1 (D) Negligent homicide as prohibited in § 5-10-105;
- 2 (E) Kidnapping as prohibited in § 5-11-102;
- 3 (F) False imprisonment in the first and second degrees as
- 4 prohibited in §§ 5-11-103 and 5-11-104;
- 5 (G) Permanent detention or restraint as prohibited in § 5-
- 6 11-106;
- 7 (H) Battery in the first, second, and third degrees as
- 8 prohibited in §§ 5-13-201, 5-13-202 and 5-13-203;
- 9 (I) Aggravated assault as prohibited in § 5-13-204;
- 10 (J) Assault in the first and second degrees as prohibited
- 11 in §§ 5-13-205 and 5-13-206;
- 12 (K) Terroristic threatening in the first and second
- 13 degrees as prohibited in § 5-13-301(a) and (b);
- 14 (L) Any sexual offense as prohibited in § 5-14-101 et
- 15 seq.;
- 16 (M) Permitting abuse of a child as prohibited in § 5-27-
- 17 221;
- 18 (N) Endangering the welfare of a minor in the first and
- 19 second degrees as prohibited in §§ 5-27-203 and 5-27-204;
- 20 (O) Contributing to the delinquency of a minor as
- 21 prohibited in § 5-27-205;
- 22 (P) Engaging children in sexually explicit conduct for use
- 23 in visual or print medium, transportation of minors for prohibited sexual
- 24 conduct, use of a child or consent to use of a child in sexual performance,
- 25 and producing, directing, or promoting sexual performance by a child, as
- 26 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 27 (Q) Incest as prohibited in § 5-26-202;
- 28 (R) Interference with visitation as prohibited in § 5-26-
- 29 501;
- 30 (S) Interference with custody as prohibited in § 5-26-502;
- 31 (T) Engaging in conduct with respect to controlled
- 32 substances as prohibited in § 5-64-401;
- 33 (U) Distribution to minors as prohibited in § 5-64-406;
- 34 (V) Public display of obscenity as prohibited in § 5-68-
- 35 205;
- 36 (W) Prostitution as prohibited in § 5-70-102;



1 (X) Promotion of prostitution in the first, second, and  
2 third degrees as prohibited in §§ 5-70-104, 5-70-105, and 5-70-106;

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

6 (Z) Any felony or any misdemeanor involving violence,  
7 threatened violence, or moral turpitude;

8 (AA) Any former or future law of this or any other state  
9 or of the federal government which is substantially equivalent to one of the  
10 aforementioned offenses;

11 (2)(A) Any person who is required to have a criminal check under  
12 (b)(1) or (c)(1) who pleads ~~pleading~~ guilty or nolo contendere or is found  
13 guilty of any of the offenses listed in subdivision (e)(1) of this section  
14 shall be absolutely disqualified to be an owner, operator, ~~volunteer, foster~~  
15 parent, adoptive parent, member of an agency's board of directors, or  
16 employee in a child welfare agency during the period of their confinement,  
17 probation or parole supervision.

18 (B) Any person who is required to have a criminal check  
19 under (b)(1) or (c)(1) who pleads ~~pleading~~ guilty or nolo contendere or is  
20 found guilty of any of the offenses listed in subdivision (e)(1) of this  
21 section shall be presumed to be disqualified to be an owner, operator,  
22 volunteer, foster parent, adoptive parent, member of an agency's board of  
23 directors, or employee in a child welfare agency after the completion of  
24 their term of confinement, probation or parole supervision. This presumption  
25 can be rebutted in the following manner:

26 (i) ~~The applicant to own, operate or be an employee~~  
27 ~~must petition the Child Welfare Agency Review Board to make a determination~~  
28 ~~that the applicant does not pose a risk of harm to any person served by the~~  
29 ~~facility and is therefore qualified to serve in a child welfare agency. The~~  
30 ~~applicant shall bear the burden of making such a showing.~~

31 (ii) The board, in its discretion, may permit an  
32 applicant to serve own, operate or be an employee in a child welfare agency  
33 ~~is qualified to serve in a child welfare agency~~ notwithstanding having been  
34 convicted of an offense listed in this section, upon making a determination  
35 that the applicant does not pose a risk of harm to any person served by the  
36 facility. In making this determination, the board shall consider the

1 following factors:

- 2 (a) The nature and severity of the crime;
- 3 (b) The consequences of the crime;
- 4 (c) The number and frequency of crimes;
- 5 (d) The relation between the crime and the
- 6 health, safety, and welfare of persons served by a child welfare agency, such
- 7 as:

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

19 (C) The board's decision to disqualify a person servi ng  
 20 ~~from being an owner, operator, or employee~~ in a child welfare agency pursuant  
 21 to this section shall constitute the final administrative agency action and  
 22 shall not be subject to review.

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

- 26 ~~(1)(A)~~ Child abuse or neglect;
- 27 ~~(2)(B)~~ Spousal abuse;
- 28 ~~(3)(C)~~ A crime against children, including child
- 29 pornography; or
- 30 ~~(4)(D)~~ A crime involving violence, including rape, sexual
- 31 assault, or homicide, but not including other physical assault or battery.

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

- 35 (A) Child abuse or neglect;
- 36 (B) Spousal abuse;

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(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 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 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.