

1 State of Arkansas  
2 95th General Assembly  
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4

As Engrossed: H3/5/25

# A Bill

HOUSE BILL 1653

5 By: Representatives Cavanaugh, *Wooldridge*  
6 By: *Senator Irvin*  
7

## For An Act To Be Entitled

9 AN ACT TO MOVE LICENSING AND REGULATION OF  
10 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FROM THE  
11 CHILD WELFARE AGENCY REVIEW BOARD TO THE DEPARTMENT  
12 OF HUMAN SERVICES; TO SET STANDARDS FOR THE LICENSING  
13 AND REGULATION OF PSYCHIATRIC RESIDENTIAL TREATMENT  
14 FACILITIES; AND FOR OTHER PURPOSES.  
15  
16

## Subtitle

17  
18 TO SET STANDARDS FOR THE LICENSING AND  
19 REGULATION OF PSYCHIATRIC RESIDENTIAL  
20 TREATMENT FACILITIES.  
21

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

24 SECTION 1. Arkansas Code § 20-8-107, concerning the expansion of  
25 facilities or services permitted by the Health Services Permit Agency, is  
26 amended to add an additional subsection to read as follows:

27 (e)(1) The Health Services Permit Agency shall recognize an exception  
28 to the moratorium regarding bed capacity and beds in a psychiatric  
29 residential treatment facility.

30 (2) The Health Services Permit Agency shall add to the permitted  
31 bed capacity for psychiatric residential treatment facilities:

32 (A) Beds that are not currently permitted by the Health  
33 Services Permit Agency but are licensed by the Child Welfare Agency Review  
34 Board for the purpose of operating as a psychiatric residential treatment  
35 facility before the effective date of this subsection; and

36 (B) Beds that are fully constructed and could be used for



1 the purpose of operating a psychiatric residential treatment facility as of  
2 January 1, 2025.

3 (3) The total amount of additional beds authorized under this  
4 subsection shall not exceed one thousand (1,000) beds for the purpose of  
5 operating as a psychiatric residential treatment facility.

6 (4) The Health Services Permit Agency shall require prior  
7 approval for construction and renovation under § 20-8-109 for any psychiatric  
8 residential treatment facility project that exceeds one million dollars  
9 (\$1,000,000).

10  
11 SECTION 2. Arkansas Code § 20-10-101(1), concerning the definition of  
12 "administrative remedy" relating to long-term care facilities and services,  
13 is amended to read as follows:

14 (1) "Administrative remedy" means temporary management, denial  
15 of payment for all new admissions, transfer of residents, termination or  
16 suspension of license, termination of provider agreement, directed plan of  
17 correction, directed in-service training, and remedies established by  
18 Arkansas law, ~~including remedies provided in § 20-10-1408 [repealed];~~  
19

20 SECTION 3. Arkansas Code § 20-10-101(9)(A), concerning the definition  
21 of "long-term care facility" relating to long-term care facilities and  
22 services, is amended to read as follows:

23 (9)(A) "Long-term care facility" means a nursing home,  
24 residential care facility, assisted living facility, psychiatric residential  
25 treatment facility, post-acute head injury retraining and residential care  
26 facility, or any other facility which provides long-term medical or personal  
27 care.  
28

29 SECTION 4. Arkansas Code § 20-10-101, concerning definitions relating  
30 to long-term care facilities and services, is amended to add an additional  
31 subdivision to read as follows:

32 (16)(A) "Psychiatric residential treatment facility" means a  
33 standalone, nonhospital facility with a provider agreement with the Arkansas  
34 Medicaid Program to provide inpatient services benefits to individuals who  
35 are under twenty-one (21) years of age and that:

36 (i) Is accredited by The Joint Commission or any

1 other accrediting organization with comparable standards recognized by this  
2 state;

3 (ii) Attests to meeting the conditions of  
4 participation found at 42 C.F.R. Part 483, Subpart G, as existing on January  
5 1, 2025; and

6 (iii) Attests that all of the residents in the  
7 facility meet the certification of need for services requirements as  
8 identified under 42 C.F.R. Part 441, Subpart D, as existing on January 1,  
9 2025.

10 (B) A survey and certification review of a psychiatric  
11 residential treatment facility by the department shall apply to all residents  
12 being served by the certified entity regardless of residency or payment  
13 source.

14  
15 SECTION 5. Arkansas Code § 20-10-110(a)(2), concerning the definition  
16 of "long-term care facility" relating to the protection of residents'  
17 personal funds, is amended to read as follows:

18 (2) "Long-term care facility" means a nursing home, residential  
19 care facility, post-acute head injury retraining and residential care  
20 facility, assisted living facility, psychiatric residential treatment  
21 facility, or any other facility that provides long-term medical or personal  
22 care;

23  
24 SECTION 6. Arkansas Code Title 20, Chapter 46, Subchapter 4 is amended  
25 to read as follows:

26 Subchapter 4 – Psychiatric Residential Treatment Facilities

27  
28 ~~20-46-401—20-46-404. [Repealed.]~~

29  
30 20-46-401. Definitions.

31 As used in this subchapter:

32 (1) "Adverse action" means the Department of Human Services  
33 taking any of the following actions against a licensee or applicant for a  
34 psychiatric residential treatment facility license:

35 (A) Revocation of a license;

36 (B) Suspension of a license;

1                   (C) Conversion of a license from regular or provisional  
2 status to probationary status;

3                   (D) Imposition of a civil penalty;

4                   (E) Denial of an application; or

5                   (F) Reduction of a licensed capacity;

6                   (2) "Alternative compliance" means approval from the Office of  
7 Long-Term Care to allow a licensee to deviate from the letter of a rule,  
8 provided that the licensee has demonstrated how an alternate plan of  
9 compliance will meet or exceed the intent of the rule;

10                  (3) "Child" means a person who is:

11                   (A) Under eighteen (18) years of age; or

12                   (B) Adjudicated dependent-neglected, dependent, or a  
13 member of a family in need of services before eighteen (18) years of age and  
14 for whom the juvenile division of a circuit court retains jurisdiction under  
15 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

16                  (4)(A) "Class A violation" means a violation of an essential  
17 standard, including any of those governing fire, health, safety, nutrition,  
18 staff-to-child ratio, and space.

19                   (B) Operation of a psychiatric residential treatment  
20 facility shall also be a Class A violation unless specifically exempted as  
21 provided in this subchapter;

22                  (5) "Class B violation" means any other violation of a standard  
23 that is not a Class A violation;

24                  (6) "Essential standards" means standards related to issues  
25 involving fire, health, safety, nutrition, discipline, staff-to-child ratio,  
26 and space;

27                  (7) "Healthcare provider" means a healthcare professional  
28 licensed in this state, including without limitation a doctor, nurse,  
29 emergency medical technician, counselor, mental health professional, or  
30 dentist;

31                  (8) "Minimum standards" means rules as established by the Office  
32 of Long-Term Care that set forth the minimum acceptable level of practice for  
33 a psychiatric residential treatment facility;

34                  (9) "Psychiatric residential treatment facility" means the same  
35 as defined at § 20-10-101; and

36                  (10) "Substantial compliance" means compliance with all

1 essential standards necessary to protect the health, safety, and welfare of  
2 the children in the care of a psychiatric residential treatment facility.

3  
4 20-46-402. Licensure – Unlawful acts.

5 (a)(1) It is unlawful for any person, partnership, group, corporation,  
6 association, or other entity or identifiable group of entities having a  
7 coordinated ownership with controlling interest to operate or assist in the  
8 operation of a psychiatric residential treatment facility that has not been  
9 licensed by the Office of Long-Term Care under this subchapter.

10 (2) Before obtaining a license under this subchapter, a  
11 psychiatric residential treatment facility shall obtain a permit from the  
12 Health Services Permit Agency or Health Services Permit Commission to operate  
13 in Arkansas.

14 (3) The bed capacity allowed by the permit issued by the Health  
15 Services Permit Agency or Health Services Permit Commission includes both in-  
16 state and out-of-state clients.

17 (4) Expansion of bed capacity by an existing licensee shall  
18 require a license from the office and a permit from the Health Services  
19 Permit Agency.

20 (5)(A) A license issued by the office under this subchapter is  
21 effective unless revoked, suspended, or terminated by the office.

22 (B) In addition to any other basis provided by law or  
23 rule, the Department of Human Services shall terminate the license of a  
24 psychiatric residential treatment facility licensee that has not been in  
25 operation for a consecutive twelve-month period.

26 (C) The department may revoke, suspend, or terminate a  
27 license upon any basis provided by law or rule, including without limitation  
28 the failure to be in operation or in substantial compliance for a consecutive  
29 six-month period.

30 (b) It is unlawful for any person to falsify an application for  
31 licensure, to knowingly circumvent the authority of this subchapter, to  
32 knowingly violate the orders issued by the department, or to advertise for  
33 inpatient psychiatric residential treatment when not licensed under this  
34 subchapter to provide those services.

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

36

1           20-46-403. Licensure – Process.

2           (a) Any person, partnership, group, corporation, organization,  
3 association, or other entity or identifiable group of entities having a  
4 coordinated ownership with controlling interest, desiring to operate a  
5 psychiatric residential treatment facility shall submit:

6                   (1) An application and a reasonable application fee, as  
7 determined by the Department of Human Services, to the department; and

8                   (2) A separate application for license for each separate  
9 physical location.

10           (b)(1) The department shall review, inspect, and investigate each  
11 applicant seeking to operate a psychiatric residential treatment facility and  
12 shall determine whether to issue a license and what the terms and conditions  
13 of the license should be.

14                   (2) The department shall complete its determination under  
15 subdivision (b)(1) of this section within ninety (90) days after receiving a  
16 complete application from the applicant.

17                   (3) A complete application shall consist of:

18                           (A) A completed application form;

19                           (B) A copy of the articles of incorporation, bylaws, and  
20 current board roster, if applicable, including names and addresses of the  
21 officers;

22                           (C) A complete personnel list with verifications of  
23 qualifications and experience;

24                           (D) Substantiation of the financial soundness of the  
25 psychiatric residential treatment facility's operation; and

26                           (E) A written description of the psychiatric residential  
27 treatment facility's program of care, including intake policies, types of  
28 services offered, and a written plan for providing healthcare services to  
29 children in care.

30           (c)(1) The department shall issue a regular license that shall be  
31 effective if the department finds that:

32                           (A) The applicant for a psychiatric residential treatment  
33 facility license meets all licensing requirements; or

34                           (B) The applicant meets all essential standards, has a  
35 favorable compliance history, and has the ability and willingness to comply  
36 with all essential standards within a reasonable time.

1           (2)(A) The department may issue a provisional license that shall  
2 be effective for up to one (1) year if the department finds that the  
3 applicant meets all essential standards but the applicant requires more  
4 frequent monitoring because the applicant's ability or willingness to meet  
5 all essential standards within a reasonable time has not been favorably  
6 determined.

7           (B) The department shall not issue a regular or  
8 provisional license to any facility that does not meet all essential  
9 standards.

10          (d)(1) A license to operate a psychiatric residential treatment  
11 facility shall apply only to the owner stated on the application.

12          (2) The license shall be transferable, along with all capacity  
13 and rights of licensure, from:

14           (A) One (1) location to another if the initial location is  
15 no longer operated as a psychiatric residential treatment facility; and

16           (B) One (1) owner to another, if permitted under  
17 subdivision (d)(3) of this section.

18          (3) Whenever ownership of a controlling interest in the  
19 operation of a psychiatric residential treatment facility is sold, the  
20 following procedures shall be followed:

21           (A) The seller shall notify the department of the sale at  
22 least thirty (30) days before the completed sale;

23           (B) The seller shall remain responsible for the operation  
24 of the facility until the facility is closed or an amended license is issued  
25 to the buyer;

26           (C) The seller shall remain liable for all penalties  
27 assessed against the facility that are imposed for violations occurring  
28 before the transfer of a license to the buyer;

29           (D) The buyer shall provide all documentation required of  
30 a new applicant to the department;

31           (E) The buyer shall be subject to any corrective action  
32 notices or outstanding administrative remedies to which the seller was  
33 subject; and

34           (F) Section 20-46-402(a) shall apply in its entirety to  
35 the new owner of the psychiatric residential treatment facility.

36

1 20-46-404. Licensure posting and display.

2 If the Department of Human Services issues a license to operate a  
3 psychiatric residential treatment facility, the license shall be posted and  
4 displayed in a conspicuous place in the facility and must state at a minimum:

5 (1) The full legal name of the person, partnership, group,  
6 corporation, organization, association, or other entity or identifiable group  
7 of entities having a coordinated ownership with controlling interest holding  
8 the license, including the business name, if different;

9 (2) The address of the psychiatric residential treatment  
10 facility;

11 (3) The effective date and expiration date of the license, if  
12 applicable;

13 (4) The type of psychiatric residential treatment facility the  
14 licensee is authorized to operate;

15 (5) The ages and maximum number of children that may receive  
16 services from the psychiatric residential treatment facility;

17 (6) The status of the license, whether regular, provisional, or  
18 probationary; and

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

20  
21 20-46-405. Confidentiality and disclosure.

22 (a) Reports, correspondence, memoranda, case histories, or other  
23 materials, including protected health information, compiled or received by a  
24 licensee or a state agency, shall be confidential and shall not be released  
25 or otherwise made available except to the extent permitted by federal law and  
26 only:

27 (1) To the Department of Human Services as required by rule;

28 (2) To the parent, guardian, or custodian of a child who is the  
29 subject of the materials;

30 (3) To a child who is the subject of the materials;

31 (4) To healthcare providers to assist in the care and treatment  
32 of a child at the discretion of a licensee or state agency and if deemed to  
33 be in the best interest of the child;

34 (5) To school personnel and daycare centers caring for a child  
35 at the discretion of the licensee or state agency and if deemed to be in the  
36 best interest of the child;



1           (6) For any audit or similar activity conducted in connection  
2 with the administration of any such plan or program by any governmental  
3 agency that is authorized by law to conduct the audit or activity;

4           (7) Upon presentation of an order of appointment, to a court-  
5 appointed special advocate;

6           (8) To an attorney ad litem for a child;

7           (9) For law enforcement or a prosecuting attorney upon request;

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

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

12           (12) For purposes directly connected with the administration of  
13 any of the state plans as outlined at 42 U.S.C. § 671, as existing on January  
14 1, 2025;

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

18           (14)(A) To individual federal and state representatives and  
19 senators in their official capacity and their staff members with no  
20 rediscovery of information.

21           (B) Disclosure shall not be made to any committee or  
22 legislative body of any information that identifies by name or address any  
23 recipient of services;

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

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

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

34           (18)(A) To a person, agency, or organization engaged in a bona  
35 fide research or evaluation project that is determined by the Division of  
36 Children and Family Services to have value for the evaluation or development

1 of policies and programs within the division.

2 (B) Any confidential information provided by the  
3 department for a research or evaluation project under this subdivision  
4 (a)(18)(A) of this section shall not be redisclosed or published;

5 (19) To a child fatality review panel as authorized by the  
6 department; or

7 (20) To the Child Welfare Ombudsman.

8 (b)(1) Any person or agency to whom disclosure is made shall not  
9 disclose to any other person reports or other information obtained under this  
10 section.

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

13 (3) This subchapter does not prevent subsequent disclosure by a  
14 child or his or her parent or guardian.

15 (4) Any data, records, reports, or documents released under this  
16 section to a law enforcement agency, the prosecuting attorney, or a court by  
17 the department are confidential and shall be sealed and not redisclosed  
18 without a protective order to ensure that items of evidence for which there  
19 is a reasonable expectation of privacy are not distributed to persons or  
20 institutions without a legitimate interest in the evidence.

21  
22 20-46-406. Criminal record and child maltreatment checks.

23 (a) The following individuals in connection with a psychiatric  
24 residential treatment facility shall be checked for a state and federal  
25 criminal record and against the Child Maltreatment Central Registry:

26 (1) An employee of the psychiatric residential treatment  
27 facility having direct and unsupervised contact with children;

28 (2) A volunteer of the psychiatric residential treatment  
29 facility having direct and unsupervised contact with children;

30 (3) An owner of the psychiatric residential treatment facility  
31 having direct and unsupervised contact with children;

32 (4) A member of the psychiatric residential treatment facility's  
33 board of directors having direct and unsupervised contact with children; and

34 (5) An adult working in a psychiatric residential treatment  
35 facility.

36 (b) A psychiatric residential treatment facility shall check the

1 individuals in connection with a psychiatric residential treatment facility  
2 with:

3 (1)(A) The equivalent registry in his or her state of residence  
4 and any state of residence in which the person has lived for the past five  
5 (5) years and in the person's state of employment, if different, for reports  
6 of child maltreatment in compliance with policy and procedures promulgated by  
7 the Department of Human Services.

8 (B) All persons required to be checked with the registry  
9 under subsection (b)(1)(A) of this section shall repeat the check a minimum  
10 of every two (2) years.

11 (C) The department may deny a license to any applicant  
12 found to have any record of founded child maltreatment in the official record  
13 of the registry or to an applicant who continues to employ a person with any  
14 record of founded child maltreatment in the official record of the registry.

15 (D) Any person required to be checked under this section  
16 who is found to have any record of child maltreatment in the official record  
17 of the registry shall be reviewed by the owner or operator of the psychiatric  
18 residential treatment facility in consultation with the department to  
19 determine appropriate corrective measures that would include without  
20 limitation training, probationary employment, or nonselection for employment;

21 (2)(A) The Identification Bureau of the Division of Arkansas  
22 State Police to determine if the person has pleaded guilty or nolo contendere  
23 to or has been found guilty of any offense listed in this subchapter in  
24 compliance with policy and procedures promulgated by the department.

25 (B) All persons required to be checked with the  
26 Identification Bureau of the Division of Arkansas State Police under this  
27 subsection shall repeat the check at a minimum of every five (5) years; and

28 (3)(A) The Federal Bureau of Investigation by a fingerprint-  
29 based criminal background check performed in compliance with federal law to  
30 determine if the person has pleaded guilty or nolo contendere to or been  
31 found guilty of any offense listed in this subchapter.

32 (B) In the event a legible set of fingerprints as  
33 determined by the Identification Bureau of the Division of Arkansas State  
34 Police and the Federal Bureau of Investigation cannot be obtained after a  
35 minimum of two (2) attempts by qualified law enforcement personnel, the  
36 department shall determine eligibility based upon a name check by the

1 Identification Bureau of the Division of Arkansas State Police and the  
2 Federal Bureau of Investigation.

3 (c) The owner or operator of a psychiatric residential treatment  
4 facility shall:

5 (1)(A) Maintain on file, subject to inspection by the  
6 department, evidence that all persons required to be checked under this  
7 section have been approved or disqualified in accordance with the rules of  
8 the appropriate licensing or certifying agency.

9 (B) Failure to maintain that evidence on file will be  
10 prima facie grounds to revoke the license of the owner or operator of the  
11 facility; and

12 (2) Submit the criminal records check form to the Office of  
13 Long-Term Care for the employee or volunteer, who shall not begin employment  
14 or volunteerism until the registry check and criminal records checks required  
15 under this subchapter are completed.

16 (d)(1) Each person required to have a criminal records check under  
17 this subchapter shall complete a criminal records check form developed by the  
18 department and shall sign the form that contains:

19 (A) Certification that the subject of the check consents  
20 to the completion of the check;

21 (B)(i) Certification that the subject of the check has not  
22 pleaded guilty or nolo contendere to or been found guilty of a crime.

23 (ii) If the subject of the check has been convicted  
24 of a crime, a certification containing a description of the crime and the  
25 particulars of the conviction shall be included in lieu of the certification  
26 under subdivision (d)(1)(B)(i) of this section;

27 (C) Notification that the subject of the check may  
28 challenge the accuracy and completeness of any information in any report and  
29 obtain a prompt determination as to the validity of the challenge before a  
30 final determination is made by the department with respect to his or her  
31 employment status or licensing status;

32 (D) Notification that the subject of the check may be  
33 denied a license or exemption to operate a psychiatric residential treatment  
34 facility or may be denied unsupervised access to children in the care of a  
35 psychiatric residential treatment facility due to information obtained by the  
36 check that indicates that the subject of the check has pleaded guilty or nolo

1 contendere to or been found guilty of or is under pending indictment for a  
2 crime listed in this subchapter; and

3 (E) Notification that any background check and the results  
4 thereof shall be handled in accordance with the requirements of Pub. L. No.  
5 92-544.

6 (2) Under § 25-32-107(d), the subject of the background check  
7 may submit an electronic signature to complete the records check.

8 (e) This section does not prevent the department from denying a  
9 license or exemption to an owner or preventing an operator or employee in a  
10 psychiatric residential treatment facility from having unsupervised access to  
11 children by reason of the pending appeal of a criminal conviction or child  
12 maltreatment determination.

13 (f)(1) An owner or operator of a psychiatric residential treatment  
14 facility is not liable during a conditional period of service for hiring any  
15 person required to have a background check under this subchapter who may be  
16 subject to a charge of false swearing upon completion of the registry and  
17 criminal records check.

18 (2)(A) A false swearing shall occur when a person while under  
19 oath provides false information or omits information that the person knew or  
20 reasonably should have known was material.

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

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

25  
26 20-46-407. Criminal background checks – Offenses.

27 (a) A report of a pleading of guilty or nolo contendere or a finding  
28 of guilt to any charge listed in this section shall be:

29 (1) Returned to the Department of Human Services for review; and

30 (2) Considered regardless of whether or not the record is  
31 expunged, pardoned, or otherwise sealed.

32 (b) A person who is required to have a criminal records check under §  
33 20-46-406(b)(2) and (3) shall be permanently prohibited from having direct  
34 and unsupervised contact with a child in the care of a psychiatric  
35 residential treatment facility if that person has pleaded guilty or nolo  
36 contendere to or been found guilty of any of the following offenses by any

1 court in the State of Arkansas, of a similar offense in a court of another  
2 state, or of a similar offense by a federal court, unless the conviction is  
3 vacated or reversed:

4 (1) Abuse of an endangered or impaired person, if felony, § 5-  
5 28-103;

6 (2) Arson, § 5-38-301;

7 (3) Capital murder, § 5-10-101;

8 (4) Endangering the welfare of an incompetent person in the  
9 first degree, § 5-27-201;

10 (5) Kidnapping, § 5-11-102;

11 (6) Murder in the first degree, § 5-10-102;

12 (7) Murder in the second degree, § 5-10-103;

13 (8) Rape, § 5-14-103;

14 (9) Sexual assault in the first degree, § 5-14-124;

15 (10) Sexual assault in the second degree, § 5-14-125;

16 (11) Aggravated assault upon a law enforcement officer or an  
17 employee of a correctional facility, § 5-13-211(a)(2), if a Class Y felony;  
18 and

19 (12) Trafficking of persons, § 5-18-103.

20 (c) Except as provided under § 20-46-408, a person who is required to  
21 have a criminal records check under § 20-46-406(b)(2) and (3) is not eligible  
22 to have direct and unsupervised contact with a child in the care of a  
23 psychiatric residential treatment facility if that person has pleaded guilty  
24 or nolo contendere to or been found guilty of any of the following offenses  
25 by a court in the State of Arkansas, of a similar offense in a court of  
26 another state, or of a similar offense by a federal court, unless the  
27 conviction is vacated or reversed:

28 (1) Criminal attempt, § 5-3-201, to commit any offenses in  
29 subsection (b) or (c) of this section;

30 (2) Criminal complicity, § 5-3-202, to commit any offenses in  
31 subsection (b) or (c) of this section;

32 (3) Criminal solicitation, § 5-3-301, to commit any offenses in  
33 subsection (b) or (c) of this section;

34 (4) Criminal conspiracy, § 5-3-401, to commit any offenses in  
35 subsection (b) or (c) of this section;

36 (5) Assault in the first, second, or third degree, §§ 5-13-205 -

- 1 5-13-207;  
2 (6) Aggravated assault, § 5-13-204;  
3 (7) Aggravated assault on a family or household member, § 5-26-  
4 306;  
5 (8) Battery in the first, second, or third degree, §§ 5-13-201 –  
6 5-13-203;  
7 (9) Breaking or entering, § 5-39-202;  
8 (10) Burglary, § 5-39-201;  
9 (11) Coercion, § 5-13-208;  
10 (12) Computer crimes against minors, § 5-27-601 et seq.;  
11 (13) Contributing to the delinquency of a juvenile, § 5-27-220;  
12 (14) Contributing to the delinquency of a minor, § 5-27-209;  
13 (15) Criminal impersonation, § 5-37-208;  
14 (16) Criminal use of prohibited weapons, § 5-73-104;  
15 (17) Communicating a death threat concerning a school employee  
16 or student, § 5-17-101;  
17 (18) Domestic battering in the first, second, or third degree,  
18 §§ 5-26-303 – 5-26-305;  
19 (19) Employing or consenting to the use of a child in a sexual  
20 performance, § 5-27-402;  
21 (20) Endangering the welfare of a minor in the first or second  
22 degree, §§ 5-27-205 and 5-27-206;  
23 (21) Endangering the welfare of an incompetent person in the  
24 second degree, § 5-27-202;  
25 (22) Engaging children in sexually explicit conduct for use in  
26 visual or print medium, § 5-27-303;  
27 (23) False imprisonment in the first or second degree, §§ 5-11-  
28 103 and 5-11-104;  
29 (24) Felony abuse of an endangered or impaired person, § 5-28-  
30 103;  
31 (25) Felony interference with a law enforcement officer, § 5-54-  
32 104;  
33 (26) Felony violation of the Uniform Controlled Substances Act,  
34 § 5-64-101 et seq., § 5-64-201 et seq., § 5-64-301 et seq., § 5-64-401 et  
35 seq., and § 5-64-501 et seq.;  
36 (27) Financial identity fraud, § 5-37-227;

- 1           (28) Forgery, § 5-37-201;  
2           (29) Incest, § 5-26-202;  
3           (30) Interference with court-ordered custody, § 5-26-502;  
4           (31) Interference with visitation, § 5-26-501;  
5           (32) Introduction of controlled substance into body of another  
6 person, § 5-13-210;  
7           (33) Manslaughter, § 5-10-104;  
8           (34) Negligent homicide, § 5-10-105;  
9           (35) Obscene performance at a live public show, § 5-68-305;  
10          (36) Offense of cruelty to animals, § 5-62-103;  
11          (37) Offense of aggravated cruelty to a dog, cat, or equine, §  
12 5-62-104;  
13          (38) Pandering or possessing visual or print medium depicting  
14 sexually explicit conduct involving a child, § 5-27-304;  
15          (39) Permanent detention or restraint, § 5-11-106;  
16          (40) Permitting abuse of a minor, § 5-27-221;  
17          (41) Producing, directing, or promoting a sexual performance by  
18 a child, § 5-27-403;  
19          (42) Promoting obscene materials, § 5-68-303;  
20          (43) Promoting obscene performance, § 5-68-304;  
21          (44) Promoting prostitution in the first, second, or third  
22 degree, §§ 5-70-104 – 5-70-106;  
23          (45) Prostitution, § 5-70-102;  
24          (46) Public display of obscenity, § 5-68-205;  
25          (47) Resisting arrest, § 5-54-103;  
26          (48) Robbery, § 5-12-102;  
27          (49) Aggravated robbery, § 5-12-103;  
28          (50) Sexual extortion, § 5-14-113;  
29          (51) Sexual solicitation, § 5-70-103;  
30          (52) Sexual offenses, § 5-14-101 et seq., except for a  
31 misdemeanor violation of sexual indecency with a child, § 5-14-110;  
32          (53) Simultaneous possession of drugs and firearms, § 5-74-106;  
33          (54) Soliciting money or property from incompetent persons, § 5-  
34 27-229;  
35          (55) Stalking, § 5-71-229;  
36          (56) Terroristic act, § 5-13-310;



1 (57) Terroristic threatening, § 5-13-301;

2 (58) Theft by receiving, § 5-36-106;

3 (59) Theft of property, § 5-36-103;

4 (60) Theft of public benefits, § 5-36-202;

5 (61) Theft of services, § 5-36-104;

6 (62) Transportation of minors for prohibited sexual conduct, §  
7 5-27-305;

8 (63) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

9 and

10 (64) Voyeurism, § 5-16-102.

11 (d) A former or future law of this state or any other state or of the  
12 federal government that is substantially equivalent to an offense listed in  
13 subsection (c) of this section shall be considered as prohibiting employment  
14 or volunteering under subsections (b) and (c) of this section.

15  
16 20-46-408. Criminal background checks – Disqualification.

17 (a) A person who is required to have a criminal records check and  
18 national fingerprint background check under § 20-46-406(b)(2) and (3) who has  
19 pleaded guilty or nolo contendere to or been found guilty of any of the  
20 offenses listed in § 20-46-407 shall be disqualified from being an owner,  
21 operator, volunteer, member of a board of directors, or employee in a  
22 psychiatric residential treatment facility during the period of the person's  
23 confinement, probation, parole, or post-release supervision unless the  
24 conviction is vacated or reversed.

25 (b) Except as provided under subsection (c) of this section, a person  
26 who has pleaded guilty or nolo contendere to or been found guilty of any  
27 offense listed in § 20-46-407 shall not work in a psychiatric residential  
28 treatment facility unless:

29 (1) The date of a plea of guilty or nolo contendere or the  
30 finding of guilt for a misdemeanor offense is at least five (5) years from  
31 the date of the records check; and

32 (2) There has been no criminal conviction or plea of guilty or  
33 nolo contendere of any type or nature during the five-year period preceding  
34 the background check request.

35 (c)(1) A person who is required to have a criminal records check and  
36 national fingerprint background check under § 20-46-406(b)(2) and (3) who has

1 pleaded guilty or nolo contendere to or been found guilty of any of the  
2 offenses listed in § 20-46-407 shall be presumed to be disqualified to be an  
3 owner, operator, volunteer, member of a psychiatric residential treatment  
4 facility's board of directors, or employee in a psychiatric residential  
5 treatment facility after the completion of his or her term of confinement,  
6 probation, parole, or post-release supervision unless the conviction is  
7 vacated or reversed.

8 (2) An owner, operator, volunteer, member of any psychiatric  
9 residential treatment facility's board of directors, or an employee in a  
10 psychiatric residential treatment facility may petition the Department of  
11 Human Services for a waiver which can be rebutted in the following manner:

12 (A) The applicant shall petition the department to make a  
13 determination that the applicant does not pose a risk of harm to any person;

14 (B) The applicant shall bear the burden of making a  
15 showing as described in subdivision (c)(2)(A) of this section; and

16 (C)(i) The department may permit an applicant to be an  
17 owner, operator, volunteer, member of a psychiatric residential treatment  
18 facility's board of directors, or an employee in a psychiatric residential  
19 treatment facility notwithstanding having pleaded guilty or nolo contendere  
20 to or been found guilty of an offense listed in § 20-46-407 upon making a  
21 determination that the applicant does not pose a risk of harm to any person  
22 served by the psychiatric residential treatment facility.

23 (ii) In making a determination, the department shall  
24 consider:

25 (a) The nature and severity of the crime;

26 (b) The consequences of the crime;

27 (c) The number and frequency of the crimes;

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

30 (1) Age and vulnerability of the victim;

31 (2) Harm suffered by the victim; and

32 (3) Similarity between the victim and  
33 the persons served by the psychiatric residential treatment facility;

34 (e) The time elapsed without a repeat of the  
35 same or similar crime;

36 (f) Documentation of successful completion of

1 training or rehabilitation related to the crime; and

2 (g) Any other information that relates to the  
3 applicant's ability to care for children or is deemed relevant.

4 (iii) The department's decision to disqualify a  
5 person from being an owner, operator, volunteer, member of a psychiatric  
6 residential treatment facility's board of directors, or an employee in a  
7 psychiatric residential treatment facility under this section shall  
8 constitute the final administrative agency action and is not subject to  
9 review.

10 (d) Information obtained from the criminal records check and the  
11 national fingerprint criminal background checks is confidential and shall not  
12 be disclosed by the department except to the applicant and his or her  
13 attorney during a meeting with the department only if no redisclosure by the  
14 applicant or his or her attorney occurs and all copies shared with the  
15 applicant and his or her attorney are returned to the department.

16  
17 SECTION 7. Arkansas Code § 9-28-402(8), concerning the definition of  
18 "child welfare agency" within the Child Welfare Agency Licensing Act, is  
19 amended to read as follows:

20 (8) "Child welfare agency" means any person, corporation,  
21 partnership, voluntary association, or other entity or identifiable group of  
22 entities having a coordinated ownership of controlling interest, whether  
23 established for profit or otherwise, that is not excluded under this  
24 subchapter and engages in any of the following activities:

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

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

32 (C) Plans for or assists in the placements described in  
33 subdivision (8)(B) of this section; or

34 (D) Receives, places, plans, or assists in the placement  
35 of a child victim of human trafficking in a home or any type of shelter or  
36 facility;

1  
2 SECTION 8. Arkansas Code § 9-28-402(12), concerning the definition of  
3 "exempt child welfare agency" within the Child Welfare Agency Licensing Act,  
4 is amended to read as follows:

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

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

13 (B)(i) Any agency of the State of Arkansas that is  
14 statutorily authorized to administer or supervise child welfare activities.

15 (ii) In order to maintain exempt status, the state  
16 child welfare agency shall state every two (2) years in written form signed  
17 by the persons in charge that their agency is in substantial compliance with  
18 published state agency child welfare standards.

19 (iii) Visits to review and advise exempt state  
20 agencies shall be made as deemed necessary by the Child Welfare Agency Review  
21 Board to verify and maintain substantial compliance with the standards;

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

24 ~~(D) A hospital providing acute care licensed pursuant to §~~  
25 ~~20-9-201 et seq.;~~

26 ~~(E)(D)~~ Any facility governed by the Department of Human  
27 Services State Institutional System Board or its successor;

28 ~~(F) Human development centers regulated by the Board of~~  
29 ~~Developmental Disabilities Services pursuant to the Location Act for~~  
30 ~~Community Homes for Individuals with Intellectual and Developmental~~  
31 ~~Disabilities, § 20-48-601 et seq.;~~

32 ~~(G) Any facility licensed as a family home pursuant to the~~  
33 ~~Location Act for Community Homes for Individuals with Intellectual and~~  
34 ~~Developmental Disabilities, § 20-48-601 et seq.;~~

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

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

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

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

11                   ~~(L) The Division of Developmental Disabilities Services;~~  
12 and

13                   ~~(M) Any intellectual or other developmental disabilities~~  
14 ~~services waiver provider licensed under § 20-48-208 or the Location Act for~~  
15 ~~Community Homes for Individuals with Intellectual and Developmental~~  
16 ~~Disabilities, § 20-48-601 et seq.;~~

17  
18           SECTION 9. Arkansas Code § 9-28-402(18) is repealed.

19                   ~~(18) "Psychiatric residential treatment facility" means a~~  
20 ~~residential childcare facility in a nonhospital setting that provides a~~  
21 ~~structured, systematic, therapeutic program of treatment under the~~  
22 ~~supervision of a psychiatrist, for children who are emotionally disturbed and~~  
23 ~~in need of daily nursing services, psychiatrist's supervision, and~~  
24 ~~residential care but who are not in an acute phase of illness requiring the~~  
25 ~~services of an inpatient psychiatric hospital;~~

26  
27           SECTION 10. Arkansas Code § 9-28-402(22), concerning the definition of  
28 "residential childcare facility" within the Child Welfare Agency Licensing  
29 Act, is amended to read as follows:

30                   (22)(A) "Residential childcare facility" means any child welfare  
31 agency that is not an excluded child welfare agency under this subchapter and  
32 provides care, training, education, custody, or supervision on a twenty-four-  
33 hour basis for six (6) or more unrelated children, excluding foster homes  
34 that have six (6) or more children who are all related to each other but who  
35 are not related to the foster parents.

36                   (B) A "residential childcare facility" does not include a

1 facility that provides inpatient psychiatric treatment, which shall not be  
2 licensed as a residential childcare facility;

3  
4 SECTION 11. Arkansas Code § 9-28-402, concerning the definitions  
5 within the Child Welfare Agency Licensing Act, is amended to add an  
6 additional subdivision to read as follows:

7 (32) "Excluded child welfare agency" means any person,  
8 corporation, partnership, voluntary association, or other entity, whether  
9 established for-profit or otherwise, that meets the definition of a child  
10 welfare agency or an exempt child welfare agency but is licensed or certified  
11 by the Department of Human Services or the Department of Health and is  
12 enrolled in the Arkansas Medicaid Program.

13  
14 SECTION 12. Arkansas Code § 9-28-403(a), concerning the creation and  
15 authority of the Child Welfare Agency Review Board, is amended to read as  
16 follows:

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

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

21 (3) An excluded child welfare agency is not subject to the  
22 provisions of this subchapter.

23  
24 SECTION 13. Arkansas Code § 9-28-404(a)(5), concerning the membership  
25 of the Child Welfare Agency Review Board, is repealed.

26 ~~(5) One (1) representative from a licensed psychiatric~~  
27 ~~residential treatment facility;~~

28  
29 SECTION 14. Arkansas Code § 9-28-407(a)(2) and (3), concerning  
30 licenses required and issued by the Child Welfare Agency Review Board, are  
31 amended to read as follows:

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

1 ~~101 et seq., for any purpose.~~

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

5 (A) ~~Obtaining any~~ Obtain a license or permit from the  
6 Office of Long-Term Care if the facility type is required to obtain a license  
7 or permit from the Office of Long-Term Care; and

8 (B)(i) ~~Obtaining any~~ Obtain a permit from the Health  
9 Services Permit Agency or the Health Services Permit Commission to operate at  
10 the capacity licensed by the board as of March 1, 2003, except as required  
11 under subdivision (a)(3)(B)(ii) of this section if the facility type is  
12 required to obtain a permit from the Health Services Permit Agency.

13 ~~(ii)(a) If a licensee is operating at less than or~~  
14 ~~at the capacity licensed by the board as of March 1, 2021, the licensee shall~~  
15 ~~obtain a permit from the Health Services Permit Agency or the Health Services~~  
16 ~~Permit Commission for any increase in capacity.~~

17 ~~(b) For the purposes of subdivision~~  
18 ~~(a)(3)(B)(ii)(a) of this section, both in-state and out-of-state clients~~  
19 ~~shall be counted in capacity for the purpose of obtaining a license from the~~  
20 ~~board and a permit from the Health Services Permit Agency or the Health~~  
21 ~~Services Permit Commission.~~

22 (ii)(a) Any facility that is required to obtain a  
23 permit from the Health Services Permit Agency shall obtain a permit for any  
24 increase in capacity.

25 (b) If a child welfare agency is operating at  
26 less than or at the capacity licensed by the board as of March 1, 2021, the  
27 licensee shall obtain a permit from the Health Services Permit Agency or the  
28 Health Services Permit Commission for any increase in capacity.

29 (c) For the purposes of (a)(3)(B)(ii)(a) of  
30 this section, both in-state and out-of-state clients shall be counted in  
31 capacity for the purpose of obtaining a license from the board and a permit  
32 from the Health Services Permit Agency or Health Services Permit Commission.

33  
34 SECTION 15. Arkansas Code § 9-28-416 is repealed.

35 ~~9-28-416. Admission of children to psychiatric residential treatment~~  
36 ~~facilities.~~

