

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S4/3/13  
**A Bill**

HOUSE BILL 1706

By: Representative Rice  
By: Senator E. Cheatham

### **For An Act To Be Entitled**

AN ACT TO AMEND THE DEFINITION OF CHILD UNDER THE CHILD WELFARE AGENCY LICENSING ACT; TO CLARIFY THE MEANING OF FOSTER HOME; TO MAKE CLARIFICATIONS TO OTHER PROVISIONS OF THE CHILD WELFARE AGENCY LICENSING ACT; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE DEFINITION OF CHILD UNDER THE CHILD WELFARE AGENCY LICENSING ACT; TO CLARIFY THE MEANING OF FOSTER HOME; AND TO MAKE CLARIFICATIONS TO OTHER PROVISIONS OF THE CHILD WELFARE AGENCY LICENSING ACT.

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

SECTION 1. Arkansas Code § 9-28-402 is amended to read as follows:

9-28-402. Definitions.

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Department of 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 or provisional status to probationary 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" means a person who is:

(A) From birth to eighteen (18) years of age; or

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

(7) "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 ~~(6)~~(7)(B) of this section;

~~(7)~~(8) “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)(9)(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)~~(10) “Class B violation” means any other violations of standards that are not Class A violations;

~~(10)~~(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;

~~(11)~~(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)(i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.

(ii) 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.~~

(iii) 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 Department of Human Services State Institutional System 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 Human Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that 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 Human Services; and

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

~~(12)~~(13)(A) “Foster home” means a private residence of one (1) or more family members that receives from a child placement agency any ~~minor child, juvenile member of a family in need of services, or dependent or dependent neglected juvenile under § 9-27-303~~ 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~~;~~.

(B) "Foster home" does not include a home suspended or closed by a child placement agency;

~~(13)~~(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;

~~(14)~~(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;

~~(15)~~(16) “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~~ Division of Children and Family Services of the Department of Human 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; and

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

~~(16)~~(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;

~~(17)~~(18) “Relative” means a person within the fifth degree of kinship by virtue of blood or adoption;

~~(18)~~(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;

~~(19)~~(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, juvenile members of a family in need of services, or dependent or dependent-neglected juveniles under § 9-27-303~~ children, excluding foster homes that have six (6) or more ~~minors, juvenile members of a family in need of services, or dependent or dependent-neglected juveniles under § 9-27-303~~ children who are all related to each other but who are not related to the foster parents;

(21) "Special consideration" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule if the licensee has demonstrated that the deviation is in the best interest of the children and does not pose a risk to persons served by the licensee;

~~(20)~~(A)~~(22)~~(A) “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.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

~~(21)~~(23) “Temporary camp” means any facility or program providing twenty-four-hour care or supervision to children that 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

~~(22)~~(24) “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.

SECTION 2. Arkansas Code § 9-28-405(h), concerning the Child Welfare Agency Review Board, is amended to read as follows:

(h)(1) The board or its designee 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 or its designee 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) The board or its designee may grant an agency’s request for special consideration upon a finding that the request is in the best interest of the child or children or does not pose a risk to the persons served by the agency.

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

SECTION 3. Arkansas Code § 9-28-406(e), concerning the enforcement duties of the Department of Human Services, is amended to read as follows:

(e)(1) The department shall ~~issue a report following inspections of~~ inspect child welfare agencies as provided in this subsection.

(2) If the department 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 department shall issue a ~~corrective action notice with the report~~ notice of noncompliance to the child welfare agency. ~~The corrective action notice must require the licensee to outline a corrective action plan.~~ The department’s ~~corrective action~~ notice of noncompliance 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)(i) If the child welfare agency believes that the contents of the department's ~~corrective action~~ notice of noncompliance are in error, the child welfare agency may ask licensing authorities to reconsider the parts of the ~~corrective action~~ notice of noncompliance that are alleged to be in error.

(ii) 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~~ within twenty (20) business days of receipt of the notice of noncompliance.

(iii) The request shall specify the parts of the notice of noncompliance that are alleged to be in error, explaining why they are in error, and include documentation to support the allegation of error.

(B)(i) The department shall render a decision on the request for reconsideration within ~~fifteen (15)~~ twenty (20) working days after the date the request for reconsideration was received.

(ii) The licensee's request for reconsideration and supporting documentation shall be retained by the department and made a part of the licensee's record.

(4)(A) If upon reinspection or other acceptable means of verification, the department finds that the licensee has corrected the violation or violations specified in the ~~corrective action~~ notice of noncompliance, the department ~~employee~~ shall ~~indicate this~~ note the correction and the date the correction was verified in the licensee's ~~file~~ record.

(B) If upon reinspection, the department finds that the licensee has not corrected the violations specified in the ~~corrective action order~~ notice of noncompliance within the required time frame, the department may in its discretion petition the board to impose appropriate adverse action against the licensee.

(C) In the case of an applicant for a license, if the

board or its designee finds that the applicant has not corrected the violations in a previously issued ~~corrective action~~ notice of noncompliance, the department may recommend denial of the application for a child welfare agency license.

SECTION 4. Arkansas Code § 9-28-407(c)(2)(A), concerning licenses required and issued, is amended to read as follows:

(2)(A) The Department of Human Services shall also furnish to the applicant upon request ~~a copy of this subchapter and the policies and procedures of the board at the time the person requests~~ an application form.

SECTION 5. Arkansas Code § 9-28-407(f), concerning licenses required and issued, is amended to read as follows:

(f)(1) A license to operate a child welfare agency shall apply only to the ~~address and location~~ owner stated on the application ~~and license issued,~~ and it may be transferable from one (1) holder of the license to another, along with all capacity and rights of licensure, if permitted under ~~subdivision (f)(2) of this section.~~

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

(A) One (1) location to another; and

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

(3) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures shall be followed:

(A) The seller shall notify the Department of Human Services of the sale at least thirty (30) days before the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until the agency is closed or an amended 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 occurring before the transfer of a license to the buyer;

(D) The buyer shall provide all documentation required of a new applicant to the Department of Human Services;

(E) The buyer shall be subject to any corrective action notices to which the seller was subject; and

~~(E)~~(F) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

SECTION 6. Arkansas Code § 9-28-407(h)(1), concerning licenses required and issued, is amended to add an additional subdivision to read as follows:

(X) To a child fatality review panel as authorized by the Department of Human Services.

SECTION 7. Arkansas Code § 9-28-407(h)(3), concerning licenses required and issued, is amended to read as follows:

(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.

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the child or his or her parent or guardian.

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

SECTION 8. Arkansas Code § 9-28-409 is amended to read as follows:

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

(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)~~ five (5) 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 ~~ten (10)~~ fourteen (14) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members ~~ten (10)~~ fourteen (14) years of age and older, excluding children in foster care;

(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 that 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 at a minimum of every two (2) years, ~~except that~~ including 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~~ to determine if the person has pleaded guilty or nolo contendere

to or has been found guilty 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) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen ~~(18)~~ and one-half (18 1/2) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police ~~for convictions~~ to determine if any of the persons have pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board at a minimum of every two (2) years.

(3)(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.

(4) All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) 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.

(c)(1) Each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past ~~six (6)~~ five (5) years shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation ~~for convictions~~ to determine if the person has pleaded guilty or nolo contendere to or been found guilty 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) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen (18) years of age and older, excluding children in foster care, have continuously resided in a state for at least ~~six (6)~~ five (5) years before the adoption; and

(b) The state-of-residence criminal records check is available.

(2)(A)(i) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster or adoptive

parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation ~~for convictions~~ to determine if any of the persons has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter.

(ii) A household member who turns eighteen (18) years of age has up to six (6) months from the date of his or her eighteenth birthday to have a background check completed.

(B) 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.

(C) 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 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~~ pleaded guilty or nolo contendere to or been found guilty 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 that indicates that the subject of the check has ~~been convicted of~~ pleaded guilty or nolo contendere to or been

found guilty 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. No. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism 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 two (2) 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 subdivision (d)(2) or subdivision (h)(1)~~

~~of this section, no person who is required to have a criminal check under subdivision (b)(1) or subdivision (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 §§ 5-27-205 and 5-27-206;~~
- ~~(O) Contributing to the delinquency of a minor as prohibited in § 5-27-209;~~

~~(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 the former § 5-64-401 and § 5-64-419 — § 5-64-442;~~

~~(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 that 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 subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (c)(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 (f)(1) of this section, any person who is required to have a criminal check under subdivision (b)(1) or subdivision (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (c)(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. The operator, volunteer, foster parent, adoptive parent, household member of a foster parent or an adoptive parent, member of any agency's board of directors, or an employee in a child welfare agency cannot petition the board unless the agency supports the petition. 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. A report of a pleading of guilty or nolo contendere or a finding of guilt to any charge listed in this subsection shall be:~~

(A) Returned to the Division of Children and Family Services of the Department of Human Services for review; and

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

(2) A person who is required to have a criminal records check under subdivisions (b)(1) or (c)(1) of this section shall be absolutely and permanently prohibited from having 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 been found guilty of any of the following offenses by any court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

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

(B) Arson, § 5-38-301;

(C) Capital Murder, § 5-10-101;

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

(E) Kidnapping, § 5-11-102;

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

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

(H) Rape, § 5-14-103;

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

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

(3) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or (c)(1) of this section shall not 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 been found guilty of, any of the following offenses by a court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Criminal attempt, § 5-3-201 to commit any offenses in subdivision (e)(2) or (3) of this section;

(B) Criminal complicity, § 5-3-202 to commit any offenses in subdivision (e)(2) or (3) of this section;

(C) Criminal conspiracy, § 5-3-401 to commit any offenses in subdivision (e)(2) or (3) of this section;

(D) Criminal solicitation, § 5-3-301 to commit any offenses in subdivision (e)(2) or (3) of this section;

(E) Assault in the first, second, or third degree, §§ 5-13-205 - 5-13-207;

(F) Aggravated assault, § 5-13-204;

(G) Aggravated assault on a family or household member, § 5-26-306;

(H) Battery in the first, second, or third degree, §§ 5-13-201 - 5-13-203;

(I) Breaking or entering, § 5-39-202;

(J) Burglary, § 5-39-201;

(K) Coercion, § 5-13-208;

(L) Computer crimes against minors, § 5-27-601 et seq.;

(M) Contributing to the delinquency of a juvenile, § 5-27-220;

(N) Contributing to the delinquency of a minor, § 5-27-209;

(O) Criminal impersonation, § 5-37-208;

- (P) Criminal use of a prohibited weapon, § 5-73-104;
- (Q) Communicating a death threat concerning a school employee or student, § 5-17-101;
- (R) Domestic battery in the first, second, or third degree, §§ 5-26-303 - 5-26-305;
- (S) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- (T) Endangering the welfare of a minor in the first or second degree, §§ 5-27-205 and 5-27-206;
- (U) Endangering the welfare of an incompetent person in the second degree, § 5-27-202;
- (V) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
- (W) False imprisonment in the first or second degree, §§ 5-11-103 and 5-11-104;
- (X) Felony abuse of an endangered or impaired person, § 5-28-103;
- (Y) Felony interference with a law enforcement officer, § 5-54-104;
- (Z) Felony violation of the Uniform Controlled Substance Act, §§ 5-64-101 et seq. - 5-64-501 et seq.;
- (A)(A) Financial identity fraud, § 5-37-227;
- (B)(B) Forgery, § 5-37-201;
- (C)(C) Incest, § 5-26-201;
- (D)(D) Interference with court ordered custody, § 5-26-502;
- (E)(E) Interference with visitation, § 5-26-501;
- (F)(F) Introduction of controlled substance into the body of another person, § 5-13-210;
- (G)(G) Manslaughter, § 5-10-104;
- (H)(H) Negligent homicide, § 5-10-105;
- (I)(I) Obscene performance at a live public show, § 5-68-305;
- (J)(J) Offense of cruelty to animals, § 5-62-103;
- (K)(K) Offense of aggravated cruelty to dog, cat, or horse, § 5-62-104;

- (L)(L) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- (M)(M) Sexual solicitation, § 5-70-103;
- (N)(N) Permanent detention or restraint, § 5-11-106;
- (O)(O) Permitting abuse of a minor, § 5-27-221;
- (P)(P) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- (Q)(Q) Promoting obscene materials, § 5-68-303;
- (R)(R) Promoting obscene performance, § 5-68-304;
- (S)(S) Promoting prostitution in the first, second, or third degree, §§ 5-70-104 - 5-70-106;
- (T)(T) Prostitution, § 5-70-102;
- (U)(U) Public display of obscenity, §5-68-205;
- (V)(V) Resisting arrest, § 5-54-103;
- (W)(W) Robbery, § 5-12-102;
- (X)(X) Aggravated robbery, § 5-12-103;
- (Y)(Y) Sexual offenses, § 5-14-101 et seq.;
- (Z)(Z) Simultaneous possession of drugs and firearms, § 5-74-106;
- (A)(A)(A) Soliciting money or property from incompetents, § 5-27-229;
- (B)(B)(B) Stalking, § 5-71-229;
- (C)(C)(C) Terroristic act, § 5-13-310;
- (D)(D)(D) Terroristic threatening, § 5-13-301;
- (E)(E)(E) Theft of public benefits, § 5-36-202;
- (F)(F)(F) Theft by receiving, § 5-36-106;
- (G)(G)(G) Theft of property, § 5-36-103;
- (H)(H)(H) Theft of services, § 5-36-104;
- (I)(I)(I) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (J)(J)(J) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and
- (K)(K)(K) Voyeurism, § 5-16-102.

(4) A former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the offenses listed in subdivision (e)(3) of this section shall be considered as

prohibiting under subdivisions (e)(2) and (3) of this section.

~~(f)(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 (f)(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 §§ 5-27-205 and 5-27-206;~~

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

~~(H) Arson as prohibited in § 5-38-301;~~

~~(I) Endangering the welfare of an 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.~~ A person who is required to have a criminal records check under subdivision (b)(1) or (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be absolutely disqualified from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency during the period of the person's confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(2) Except as provided under subdivision (f)(3) of this section, a person who has pleaded guilty or nolo contendere to or been found guilty of one (1) of the offenses listed in subdivision (e)(3) of this section shall not work in a child welfare agency unless:

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

(B) There have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

(3)(A) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare 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 unless the conviction is vacated or reversed.

(B) An owner, operator, volunteer, foster parent, adoptive parent, household member of a foster parent or adoptive parent, member of any child welfare agency's board of directors, or an employee in a child welfare agency shall not petition the Child Welfare Agency Review Board unless the agency supports the petition, which can be rebutted in the following manner:

(i) The applicant shall petition the Child Welfare Agency Review Board to make a determination that the applicant does not pose a risk of harm to any person;

(ii) The applicant shall bear the burden of making such a showing; and

(iii)(a) The Child Welfare Agency Review Board 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 pleaded guilty or nolo contendere to or been found guilty 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.

(b) In making a determination, the Child Welfare Agency Review Board shall consider:

(1) The nature and severity of the crime;

- (2) The consequences of the crime;
- (3) The number and frequency of the crimes;
- (4) The relation between the crime and the health, safety, and welfare of any person, such as the:
  - (A) Age and vulnerability of the crime victim;
  - (B) Harm suffered by the victim;
  - (C) Similarity between the victim and the persons served by a child welfare agency;
- (5) The time elapsed without a repeat of the same or similar event;
- (6) Documentation of successful completion of training or rehabilitation related to the incident; and
- (7) Any other information that relates to the applicant's ability to care for children or is deemed relevant.
- (c) The Child Welfare Agency Review Board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action of the Child Welfare Agency Review Board and is not subject to review.

/s/Rice

**APPROVED: 04/16/2013**