

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 429

By: Senator L. Eads

## For An Act To Be Entitled

AN ACT TO AMEND THE LAWS REGARDING CRIMINAL  
BACKGROUND CHECKS FOR MASSAGE THERAPISTS; AND FOR  
OTHER PURPOSES.

## Subtitle

TO AMEND THE LAWS REGARDING CRIMINAL  
BACKGROUND CHECKS FOR MASSAGE THERAPISTS.

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

SECTION 1. Arkansas Code § 17-86-104 is amended to read as follows:

17-86-104. Criminal background checks.

~~An applicant applying as a new massage therapy licensee, an individual applying for a new massage therapy school license, or a licensee applying for an upgrade issued by the Arkansas State Board of Massage Therapy shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.~~

(a)(1) An applicant applying for initial licensure as a massage therapist, massage therapy school, or a license upgrade shall complete a criminal history check form and shall request the Identification Bureau of the Department of Arkansas State Police to conduct a state or national criminal history check, or both, on the applicant.

(2) The applicant shall pay all appropriate fees for the state or national criminal history check, or both, as set forth by the bureau.

(3) The applicant shall attach the criminal history check form to the licensure application.



(b) The Department of Health shall conduct a state or national criminal history check, or both, on the applicant and determine whether the applicant is disqualified from licensure based on the report of the applicant's criminal history and forward its determination to the applicant directly.

(c) A request for a state or national criminal history check, or both, on a person shall include a completed form as required by the bureau.

(d)(1) If an applicant is requesting initial licensure as a massage therapist, massage therapy school, or a license upgrade and can provide proof of continuous residency in the State of Arkansas for the past five (5) years, then the applicant shall be required to have only a state criminal history check completed.

(2) If an applicant is requesting initial licensure as a massage therapist, massage therapy school, or a license upgrade and is from another state or if the applicant cannot provide proof of continuous residency in the State of Arkansas for the past five (5) years, the applicant shall be required to have both a state and a national criminal history check completed.

(e)(1) Except as provided in subdivision (i)(1) of this section, the Department of Health shall issue a determination that a person is disqualified from licensure if the person has been found guilty of or has pleaded guilty or nolo contendere to any of the offenses listed in subsection (f) of this section, including offenses for which the record has been expunged.

(2) However, the Department of Health shall forward a request for a waiver to the Director of the Department of Health on all applicants who have been convicted of the crimes listed in subsection (f) of this section if five (5) years have passed since the conviction, if five (5) years have passed since release from custodial confinement, or if the applicants are currently licensed massage therapists, before making the final determination on licensure.

(3) An individual who is described in subdivision (e)(2) of this section will not be suspended before the director's making the final determination.

(f) The following offenses are prohibited from obtaining licensure:

(1) Capital murder, § 5-10-101;

- (2) Murder in the first degree, § 5-10-102 and murder in the second degree, § 5-10-103;
- (3) Manslaughter, § 5-10-104;
- (4) Negligent homicide, § 5-10-105;
- (5) Kidnapping, § 5-11-102;
- (6) False imprisonment in the first degree, § 5-11-103;
- (7) Permanent detention or restraint, § 5-11-106;
- (8) Robbery, § 5-12-102;
- (9) Aggravated robbery, § 5-12-103;
- (10) Battery in the first degree, § 5-13-201;
- (11) Aggravated assault, § 5-13-204;
- (12) Introduction of controlled substance into the body of another person, § 5-13-210;
- (13) Terroristic threatening in the first degree, § 5-13-301(a);
- (14) Rape, § 5-14-103;
- (15) Sexual indecency with a child, § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, §§ 5-14-124 – 5-14-127;
- (17) Incest, § 5-26-202;
- (18) Offenses against the family, §§ 5-26-303 – 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, § 5-27-205;
- (21) Permitting child abuse, § 5-27-221(a);
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, §§ 5-27-303 – 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, § 5-28-103;
- (24) Theft of property, § 5-36-103;
- (25) Theft by receiving, § 5-36-106;
- (26) Arson under § 5-38-301;
- (27) Burglary, § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 – 5-64-608, under:

(A) The former § 5-64-401; and

(B) Sections 5-64-419 – 5-64-442;

(29) Promotion of prostitution in the first degree, § 5-70-104;

(30) Stalking, § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this subsection;

(32) Driving or boating while intoxicated, § 5-65-103, that is

a:

(A) Felony; and

(B) Fourth or subsequent offense;

(33) Computer child pornography, § 5-27-603; and

(34) Computer exploitation of a child in the first degree, § 5-27-605(a).

(g) An applicant shall not be disqualified from licensure when the applicant has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense:

(1) Did not involve exploitation of an adult, abuse of a person, neglect of a person, or sexual contact; or

(2) Was not committed while performing the duties of a massage therapist or in the operation of a massage therapy school.

(h)(1) The provisions of this section may be waived by the Department of Health upon written request by the person who is the subject of the criminal history check.

(2) The written request for waiver shall be mailed to the director within fifteen (15) calendar days after receipt of the determination by the Department of Health.

(3) Factors to be considered before granting a waiver shall include, but not be limited to:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the adjudication of guilt;

(D) The person’s subsequent work history;

(E) The person’s employment references;

(F) The person’s character references; and

(G) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for by the person subject to the criminal background check.

(i)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (f) 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 (i)(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, § 5-10-101;

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

(C) Kidnapping, § 5-11-102;

(D) Rape, § 5-14-103;

(E) Sexual assault in the first degree, § 5-14-124 and sexual assault in the second degree, § 5-14-125;

(F) Endangering the welfare of a minor in the first degree, § 5-27-205 and endangering the welfare of a minor in the second degree, § 5-27-206;

(G) Incest, § 5-26-202;

(H) Arson, § 5-38-301;

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

(J) Adult abuse that constitutes a felony, § 5-28-103.

SECTION 2. Arkansas Code § 17-86-203 is amended to read as follows:  
17-86-203. Powers and duties.

(a)(1) The State Board of Health may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The board shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rule-making” definitions and for the adoption and filing of rules.

(b)(1)(A) The Department of Health shall inspect or cause an

inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

(B) The Department of Health and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The Department of Health and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

(c) The Department of Health may hold licensing examinations from time to time at a place or places as the Department of Health may designate.

(d)(1) The Department of Health may require each original applicant and each upgrade applicant for a license issued by the Department of Health to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

~~(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints.~~

~~(3) The applicant shall sign a release of information to the Department of Health and shall be responsible for the payment of any fees associated with the state and federal criminal background check.~~

~~(4)(A) Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.~~

~~(B) Results shall be sent directly to the Department of Health from the agency performing the state and federal criminal background check.~~

~~(e)(1) For purposes of this section, an applicant is not eligible to receive or hold a license issued by the Department of Health if the applicant has pleaded guilty or nolo contendere to or been found guilty of a felony or Class A misdemeanor or any offense involving fraud, theft, dishonesty, sexual misconduct, sexual solicitation, lewd behavior, child abuse or molestation, statutory rape, sexual assault, human trafficking, or other violent crimes.~~

~~(2) A provision of this section may be waived by the Department of Health if:~~

~~(A) The conviction is for a Class A misdemeanor and:~~

~~(i) The completion of the applicant's sentence and probation or completion of the applicant's sentence or probation of the offense is at least three (3) years from the date of the application; and~~

~~(ii) The applicant has no criminal convictions during the three-year period; or~~

~~(B) The conviction is for a felony of any classification and:~~

~~(i) The completion of the applicant's sentence and probation or the completion of the applicant's sentence or probation of the offense is at least five (5) years from the date of the application; and~~

~~(ii) The applicant has no criminal convictions during the five-year period.~~

~~(f) The Department of Health may permit an applicant to be licensed regardless of 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 Department of Health.~~

~~(g) In making a determination under subsection (f) of this section, the Department of Health may consider the following factors:~~

~~(1) The nature and severity of the crime;~~

~~(2) The consequences of the crime;~~

~~(3) The number and frequency of crimes;~~

~~(4) The relationship between the crime and the health, safety, and welfare of persons served by the agency, such as:~~

~~(A) The age and vulnerability of victims of the crime;~~

~~(B) The harm suffered by the victim; and~~

~~(C) The similarity between the victim and persons served by the Department of Health;~~

~~(5) The time elapsed without a repeat of the same or similar event;~~

~~(6) Documentation of successful completion of training or rehabilitation pertinent to the incident; and~~

~~(7) Any other information that bears on the applicant's ability to care for others or other relevant information.~~

~~(h) If the Department of Health waives the provisions of subsection (e) of this section, the department shall submit the reasons for waiving this provision in writing, and the determination and reasons shall be made available to the members of the department for review.~~

(2)(A) A person may challenge the completeness or accuracy of the criminal history information under § 12-12-1013.

(B) The Department of Health shall follow the established procedures for applicants to challenge determinations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) If an applicant fails or refuses to cooperate in obtaining criminal records checks, the applicant shall be denied or their licensure shall be revoked.

(e) The Department of Health may conduct additional state or national criminal background checks at the cost of the Department of Health on applicants, licensed massage therapists, or licensed massage therapy schools under investigation for a violation of this chapter.