

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

State of Arkansas
95th General Assembly
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As Engrossed: S4/3/25

A Bill

HOUSE BILL 1454

By: Representative Bentley

By: Senator Irvin

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING CRIMINAL HISTORY RECORDS CHECKS FOR EMPLOYEES OF SERVICE PROVIDERS; TO ALLOW THIRD-PARTY EMPLOYEE EVALUATION SERVICES TO PERFORM CRIMINAL HISTORY RECORDS CHECKS; TO INCLUDE INDEPENDENT CONTRACTORS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING CRIMINAL HISTORY RECORDS CHECKS FOR EMPLOYEES OF SERVICE PROVIDERS; TO ALLOW THIRD-PARTY EMPLOYEE EVALUATION SERVICES TO PERFORM CRIMINAL HISTORY RECORDS CHECKS; AND TO INCLUDE INDEPENDENT CONTRACTORS.

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

SECTION 1. Arkansas Code § 20-38-101 is amended to read as follows:

20-38-101. Definitions.

As used in this chapter:

(1) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is compensated either directly or indirectly;

(2) "Determination" means the determination made by either the licensing or certifying agency or the third-party employee evaluation service that a service provider, operator, applicant for employment with, or employee of a service provider is or is not disqualified from licensure, exemption from licensure, certification, any other operating authority, or employment



based on the criminal history of the service provider, operator, applicant, or employee;

(3)(A) "Employee" means any person who:

(i) Has unsupervised access to clients of a service provider, except as provided in subdivision (3)(B) of this section; and

(ii) Meets any of the following criteria:

(a) Provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;

(b) Is employed by a service provider to provide care to clients of the service provider;

(c) Is engaged as an independent contractor to provide care to clients of a service provider;

~~(e)~~(d) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

~~(d)~~(e) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

(B) "Employee" does not include a person who:

(i) Is a family member of a client receiving care from a service provider;

(ii) Is a volunteer; or

(iii) Works in an administrative capacity and does not have unsupervised access to clients of a service provider;

(4) "Licensing or certifying agency" means the state agency charged with licensing, exempting from licensure, certifying, or granting other operating authority to a service provider;

(5) "National criminal history records check" means a review of criminal history records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(6) "Operator" means the person signing the application of a service provider for licensure, exemption from licensure, certification, or any other operating authority;

(7) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information

relative to a person's suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care;

(8) "Report" means a statement of the criminal history of a service provider, operator, applicant for employment with, or employee of a service provider issued by the Identification Bureau of the Division of Arkansas State Police;

(9) "Service provider" means any of the following:

- (A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services;
- (B) A childcare facility as defined by § 20-78-202;
- (C) A church-exempt childcare facility as recognized under § 20-78-209;
- (D) An early intervention program provider certified by the Division of Developmental Disabilities Services;
- (E) A home- and community-based health services provider certified by the Division of Provider Services and Quality Assurance;
- (F) A home healthcare service under § 20-10-801;
- (G) A hospice program under § 20-7-117;
- (H) A long-term care facility as defined by § 20-10-702;
- (I) A nonprofit community program as defined by § 20-48-101;
- (J) An entity that provides personal care services to individuals;
- (K) A long-term care facility under § 20-10-1202; or
- (L) An entity that provides services to or houses teens and youths; ~~and~~

(10) "State criminal history records check" means a review of state criminal history records conducted by the Identification Bureau of the Division of Arkansas State Police; and

(11) "Third-party employee evaluation service" means an independent, third-party service, not associated with either the licensing or certifying agency or the service provider, authorized or otherwise eligible under state and federal law to perform national criminal history records checks and state criminal history records checks in order to provide the determination of eligibility for employment under this subchapter.

SECTION 2. Arkansas Code § 20-38-103(a)(1) and (2), concerning a service provider informing applicants and employees of service providers that employment is contingent on a criminal history records check, are amended to read as follows:

(a)(1) Before making an offer of employment or engaging as an independent contractor, a service provider shall inform an applicant that employment is contingent on the satisfactory results of criminal history records checks.

(2) If a service provider intends to make an offer of employment to or contract with an applicant, the service provider shall conduct criminal history records checks on the applicant under this section.

SECTION 3. Arkansas Code § 20-38-103(b), concerning conditionally employment for applicants and employees of service providers pending a criminal history records check, is amended to read as follows:

(b) After a service provider satisfies the regulatory requirements of the appropriate licensing or certifying agency governing registry checks of applicants for employment or engagement in a contract, the service provider may conditionally employ or contract with an applicant pending receipt of a determination from the appropriate licensing or certifying agency or from a third-party employee evaluation service.

SECTION 4. Arkansas Code § 20-38-103(c)(2)(B)(iii), concerning criminal history records checks for temporary employees of service providers, is amended to read as follows:

(iii) Provide copies of the documentation to the service provider, which shall be made available to the appropriate licensing or certifying agency or the third-party employee evaluation service upon request.

SECTION 5. Arkansas Code § 20-38-103(d) and (e), concerning criminal history records checks for applicants and employees of service providers, are amended to read as follows:

(d) A service provider shall inform employees that continued employment or contractual engagement is contingent on the satisfactory

results of criminal history records checks and shall conduct periodic criminal history records checks on all employees no less than one (1) time every five (5) years.

(e)(1)(A) When a service provider initiates a request for a state criminal history records check on an applicant for employment or contract with or an employee of the service provider, the Identification Bureau of the Division of Arkansas State Police shall issue within twenty-four (24) hours an electronic report to the licensing or certifying agency.

(B) When a licensing or certifying agency submits a request for a national criminal history records check on an applicant for employment or contract with or an employee of the service provider, the Identification Bureau of the Division of Arkansas State Police shall issue a report to the licensing or certifying agency within ten (10) days after receipt of the results of the national criminal history records check from the Federal Bureau of Investigation.

(2) After receipt of a report from the Identification Bureau of the Division of Arkansas State Police, the licensing or certifying agency shall determine whether the applicant or employee is disqualified from employment or contract with the service provider based on the criminal history of the applicant or employee and shall forward its determination to the service provider.

(3)(A)(i) If the licensing or certifying agency or the third-party employee evaluation service determines that an applicant or employee is disqualified from employment or engagement in a contract based on the criminal history of the applicant or employee, the service provider shall deny employment to the applicant or shall terminate the employment of the employee.

(ii)(a) If the applicant or employee is disqualified from employment based on the criminal history and the service provider wants to employ the applicant or continue to employ the employee, the service provider shall provide written notice to the licensing or certifying agency or the third-party employee evaluation service of the person's identity and that the service provider has determined that the person is not disqualified from employment because the person satisfies the criteria for a waiver under § 20-38-105(d)(3).

(b) After receipt of written acknowledgment

from the licensing or certifying agency or the third-party employee evaluation service that the service provider has determined that the applicant or employee is not disqualified from employment because the person satisfies the criteria for a waiver under § 20-38-105(d)(3), the service provider may employ the applicant or continue the employment of the employee.

(B) If the licensing or certifying agency or the third-party employee evaluation service issues a determination that an applicant or employee is not disqualified from employment or if there is no criminal history on an applicant or employee, the service provider may employ the applicant or continue the employment of the employee.

SECTION 6. Arkansas Code § 20-38-105(a), concerning disqualification from employment with a service provider based on a criminal history records check, is amended to read as follows:

(a)(1) Except as provided in subsection (d) of this section, the licensing or certifying agency shall issue a determination that a person is disqualified as a service provider, operator, or from employment or engagement in a contract as an independent contractor with a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(2) Except as provided in subsection (d) of this section, a service provider shall not knowingly employ or contract with a person and the licensing or certifying agency shall not knowingly contract with, license, exempt from licensure, certify, or otherwise authorize a person to be a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

SECTION 7. Arkansas Code § 20-38-105(d)(1), concerning offenses that

do not disqualify a person from employment with a service provider based on a criminal history records check, is amended to read as follows:

(d)(1) This section shall not disqualify a person from employment or engagement in a contract with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check; and

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the criminal history records check request.

SECTION 8. Arkansas Code § 20-38-105(d)(3), concerning non-disqualifying offenses related to employment with a service provider based on a criminal history records check, is amended to read as follows:

(3) This section does not disqualify a person from employment or engagement in a contract with a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for any of the nonviolent offenses listed below:

(i) Theft by receiving, § 5-36-106;

(ii) Forgery, § 5-37-201;

(iii) Financial identity fraud, § 5-37-227;

(iv) Resisting arrest, § 5-54-103;

(v) Criminal impersonation in the second degree, § 5-37-208(b);

(vi) Interference with visitation, § 5-26-501;

(vii) Interference with court-ordered custody, § 5-26-502;

(viii) Prostitution, § 5-70-102; and

(ix) Sexual solicitation, § 5-70-103;

(B) The service provider wants to employ or contract with the person;

(C) The person remains in employment or under contract

with the same service provider;

(D) The person has completed probation, parole, or post-release supervision, paid all court-ordered fees or fines, including restitution, and fully complied with all court orders pertaining to the conviction or plea;

(E) The person will be employed by or contracted with:

(i) A long-term care facility licensed by the Office of Long-Term Care;

(ii) An intermediate care or other facility, developmental day treatment clinic services provider, or group home licensed or certified by the Division of Developmental Disabilities Services; or

(iii) A childcare facility or a church-exempt childcare facility licensed by the Division of Child Care and Early Childhood Education;

(F) Subsequent to employment, the person does not plead guilty or nolo contendere to or is found guilty of any offense in subsection (b) of this section; and

(G) The person does not have a true or founded report of child maltreatment or adult maltreatment in a central registry.

SECTION 9. Arkansas Code § 20-38-105(e) and (f), concerning offenses that do not disqualify a person from employment with a service provider based on a criminal history records check, are amended to read as follows:

(e) A person shall not be disqualified from employment or engagement in a contract with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense.

(f) Even if the person would otherwise be disqualified under this section, a person shall not be disqualified from employment or engagement in a contract with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person:

(1) Was not disqualified on August 31, 2009; and

(2) Since August 31, 2009, has not been found guilty of or pleaded guilty or nolo contendere to:

- (A) An offense listed in subsection (b) of this section;
- (B) A similar offense in another state; or
- (C) A similar federal offense.

SECTION 10. Arkansas Code § 20-38-106 is amended to read as follows:
20-38-106. Evidence of criminal history records checks.

(a) A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Division of Arkansas State Police, or the licensing or certifying agency evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider and evidence that all operators, applicants for employment or engagement in a contract, and employees of the service provider have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(b) If a service provider employs an applicant or continues the employment of or contract with an employee who satisfied the criteria for a waiver under § 20-38-105(d)(3), the service provider shall maintain documentation that the person met the criteria for the waiver, including the written acknowledgment by the licensing or certifying authority.

SECTION 11. Arkansas Code § 20-38-110 is amended to read as follows:
20-38-110. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and the licensing or certifying agency or the third-party employee evaluation service.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except to the licensing or certifying agency or the third-party employee evaluation service.

SECTION 12. Arkansas Code § 20-38-112(e)(2)(C) and (D), concerning exclusions for criminal history records checks and completion of a criminal history records checks, are amended to read as follows:

(C) The service provider maintains evidence acceptable to the licensing or certifying agency that the service provider types for which employment or engagement in a contract determinations and criminal history records checks are accepted under this subsection are operated and administered by the same service provider; and

(D) The service provider maintains an original or copy of the determination letter for each employee at the service provider type for which employment or engagement in a contract determinations and criminal history records checks are accepted under this subsection and at which the employee who is the subject of the determination letter is employed.

/s/Bentley