

Exhibit Number: 5

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21-15-102. Positions involving direct contact with children and with mentally ill and developmentally disabled persons.

EXPIRES ~~3/15/05~~ ^{#5}
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(a)(1)(A) When a person applies for employment with a state agency in a designated position and if the state agency intends to make an offer of employment to the applicant, the applicant shall complete a criminal history check form and a central registry check form obtained from the state agency and shall submit the form to the state agency as part of the application process.

(B) If the state agency intends to make an offer of employment to the applicant, the state agency within five (5) days of the decision shall forward:

(i)(a) The criminal history check form to the Identification Bureau of the Department of Arkansas State Police and request the bureau to review the bureau's database of criminal history checks on state agency employees in designated positions.

(b) Within three (3) days of the receipt of a request to review the database, the bureau shall notify the state agency if the database contains any criminal history records on the applicant; and

(ii)(a) The central registry check form to the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nursing Assistant/Employment Clearance Registry for a central registry check.

(b) The state agency shall pay any fee associated with the central registry check on behalf of the applicant.

(c) Within three (3) days of the receipt of a request for a central registry check, the central registry shall notify the state agency if the database contains any information naming the applicant as an offender or perpetrator of child or adult abuse.

(2) If no criminal history or central registry records regarding the applicant are found in the database, then the state agency may make an offer of temporary employment to the applicant while the bureau completes a criminal history check and the state agency determines whether the applicant is disqualified from employment under subsection (f) of this section.

(3)(A) If a criminal history record regarding the applicant is found in the bureau's database, then the applicant is temporarily disqualified from employment until the state agency determines whether the applicant is disqualified from employment under subsection (f) of this section.

(B) If the state agency determines that the applicant is not disqualified, then the state agency may continue to temporarily employ the applicant while the bureau completes a criminal history check.

(4) If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/Employment Clearance Registry, the applicant shall be immediately disqualified.

(b)(1) Except as provided in subdivision (b)(2) of this section, the bureau shall conduct a state criminal history check and a national criminal history check on an applicant upon receiving a criminal history check request from a state agency.

(2) If the state agency can verify that the applicant has been employed by a state agency in a designated

- (10) Battery in the first degree, as prohibited in §
- (11) Aggravated assault, as prohibited in §
- (12) Introduction of controlled substance into body of another person, as prohibited in §
- (13) Terroristic threatening in the first degree, as prohibited in §
- (14) Rape, as prohibited in §
- (15) Sexual indecency with a child, as prohibited in §
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§
- (17) Incest, as prohibited in §
- (18) Offenses against the family, as prohibited in §§
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in §
- (20) Endangering the welfare of a minor in the first degree, as prohibited in §
- (21) Permitting abuse of a child, as prohibited in § (1) and (3);
- (22) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or the use of a child or consent to the use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ and
- (23) Felony adult abuse, as prohibited in §
- (24) Theft of property, as prohibited in §
- (25) Theft by receiving, as prohibited in §
- (26) Arson, as prohibited in §
- (27) Burglary, as prohibited in §
- (28) Felony violation of the Uniform Controlled Substances Act, §§ - as prohibited in §
- (29) Promotion of prostitution in the first degree, as prohibited in §
- (30) Stalking, as prohibited in §
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited

17-87-312. Criminal

checks.

(a) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal , to be conducted by the Federal Bureau of Investigation.

(b) The shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal

(d) Upon completion of the criminal , the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) [Repealed].

(f) No person shall be eligible to receive or hold a license issued by the board 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:

- (1) Capital murder, as prohibited in §
- (2) Murder in the first degree and second degree, as prohibited in §§ and
- (3) Manslaughter, as prohibited in §
- (4) Negligent homicide, as prohibited in §
- (5) Kidnapping, as prohibited in §
- (6) False imprisonment in the first degree, as prohibited in §
- (7) Permanent detention or restraint, as prohibited in §
- (8) Robbery, as prohibited in §
- (9) Aggravated robbery, as prohibited in §
- (10) Battery in the first degree, as prohibited in §
- (11) Aggravated assault, as prohibited in §
- (12) Introduction of a controlled substance into the body of another person, as prohibited in §
- (13) Terroristic threatening in the first degree, as prohibited in §

(2) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the letter of provisional licensure has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsection (f) and subdivision (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

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

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of the public.

(i)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

History. Acts 1999, No. 1208, § 4; 2001, No. 303, §§ 2-4; 2003, No. 103, §§ 1, 2; 2003, No. 1087, § 15;
<http://170.94.58.9/NXT/gateway.dll/ARCode/title20737.htm/subtitle21941/chapter22135.h...> 3/10/2005

- (1) Capital murder, as prohibited in §
- (2) Murder in the first degree and second degree, as prohibited in §§ and
- (3) Manslaughter, as prohibited in §
- (4) Battery in the first degree and second degree, as prohibited in §§ and
- (5) Aggravated assault, as prohibited in §
- (6) Terroristic threatening in the first degree, as prohibited in §
- (7) Kidnapping, as prohibited in §
- (8) Rape, as prohibited in §
- (9) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §
- (10) Incest, as prohibited in §
- (11) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, 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, as prohibited in §§ and
- (12) Distribution to minors, as prohibited in §
- (13) The manufacture, delivery, or possession with intent to manufacture or deliver any controlled substance, as prohibited in §
- (14) Sexual indecency with a child, as prohibited in §
- (15) Endangering the welfare of a minor in the first degree, as prohibited in §
- (16) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, as prohibited by §
- (17) False imprisonment in the first degree, as prohibited in §
- (18) Permanent detention or restraint, as prohibited in §
- (19) Permitting abuse of a child, as prohibited in § (1) and (3);
- (20) Negligent homicide, as prohibited by § ;
- (21) Assault in the first degree, as prohibited by §
- (22) Coercion, as prohibited by §

(B) Pleading guilty or nolo contendere to or being found guilty of a nonfelony negligent homicide or a misdemeanor involving physical mistreatment or abuse against a child and not listed in subsection (c) of this section;

(C) Holding a license obtained by fraudulent means;

(D) Revocation of a license in another state;

(E) Intentionally compromising the validity or security of any student test or testing program administered by or required by the state board or the Department of Education;

(F) Having the completed examination test score of any testing program required by the board for teacher licensure declared invalid by the testing program company and so reported to the department by the testing company;

(G) Having an expunged or pardoned conviction for any sexual or physical abuse offense committed against a child;

(H) Failing to establish or maintain the necessary requirements and standards set forth in Arkansas law or state board rules and regulations for teacher licensure; or

(I) Having knowingly and intentionally violated the provisions of § _____ and (d) or § _____

(3) For purposes of this subsection, "child" means a person enrolled in the public schools of the State of Arkansas.

(f)(1) The superintendent of each school district shall report to the board the name of any person holding a license issued by the board and currently employed or employed during the two (2) previous school years by the local school district who:

(A) Has pleaded guilty or nolo contendere to or been found guilty of a felony or any misdemeanor listed in subsection (c) of this section;

(B) Holds a license obtained by fraudulent means;

(C) Has had a similar license revoked in another state;

(D) Has intentionally compromised the validity or security of any student test or testing program administered or required by the Department of Education;

(E) Has knowingly submitted falsified information requested or required by the Department of Education; or

(F) Has failed to establish or maintain the necessary requirements and standards set forth in Arkansas law or Department of Education rules and regulations for teacher licensure.

(2) Failure of a superintendent to report information as required by this subsection may result in sanctions imposed by the board.

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) 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 age ten (10) years and older;
- (D) An adoptive parent and all household members age ten (10) years and older;
- (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 which 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 every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the 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 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) A foster parent and all household members age sixteen (16) years and older;
- (D) An owner having direct and unsupervised contact with children; and

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 _____ 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 _____ which indicates that the subject of the _____ has been convicted of, or is under pending indictment for, a crime listed in this subchapter; and

(E) Notification that any _____ and the results thereof shall be handled in accordance with the requirements of Pub. L. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records _____ form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee, who shall remain under conditional employment until the registry _____ 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 three (3) attempts by qualified law enforcement personnel, the board shall determine eligibility based upon a name _____ 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 _____ pursuant to this subchapter who may be subject to a charge of false swearing upon completion of central registry and criminal records _____

(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) of this section, no person who is required to have a criminal _____ under subdivision (b)(1) or (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:

(A) Capital murder as prohibited in §

(B) Murder in the first degree and murder in the second degree as prohibited in §§ _____ and

(X) Promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting prostitution in the third degree as prohibited in §§ _____ and _____

(Y) Computer child pornography as prohibited in § _____

(Z) Computer exploitation of a child in the first degree as prohibited in § _____ ;

(AA) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ _____ and _____ to commit any of the offenses listed in this section;

(BB) Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude;

(CC) Any former or future law of this or any other state or of the federal government which is substantially equivalent to one of the aforementioned offenses.

(2)(A) Any person who is required to have a criminal _____ under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section 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) Any person who is required to have a criminal _____ under subdivision (b)(1) or (c)(1) of this section who pleads guilty or nolo contendere to, or is found guilty of, any of the offenses listed in subdivision (e)(1) of this section 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. This presumption can be rebutted in the following manner:

(i) The applicant must petition the board to make a determination that the applicant does not pose a risk of harm to any person served by the facility and is therefore qualified to serve in a child welfare agency. The applicant shall bear the burden of making such a showing; and

(ii) The board in its discretion may permit an applicant to serve 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 persons served by a child welfare agency, such as:

(1) The age and vulnerability of victims of the crime;

(2) The harm suffered by the victim;

(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

17-27-313. Criminal

checks.

(a) On and after October 1, 1997, each first-time applicant for a license issued by the Arkansas Board of Examiners in Counseling shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal _____, to be conducted by the Federal Bureau of Investigation.

(b) The _____ shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal _____

(d) Upon completion of the criminal _____, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any _____ required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board 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 or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder, as prohibited in § _____
- (2) Murder in the first degree and second degree, as prohibited in §§ _____ and _____
- (3) Manslaughter, as prohibited in § _____
- (4) Negligent homicide, as prohibited in § _____
- (5) Kidnapping, as prohibited in § _____
- (6) False imprisonment in the first degree, as prohibited in § _____
- (7) Permanent detention or restraint, as prohibited in § _____
- (8) Robbery, as prohibited in § _____
- (9) Aggravated robbery, as prohibited in § _____
- (10) Battery in the first degree, as prohibited in § _____
- (11) Aggravated assault, as prohibited in § _____
- (12) Introduction of controlled substance into body of another person, as prohibited in § _____