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4

# A Bill

SENATE BILL 645

5 By: Senators G. Stubblefield, Caldwell, K. Ingram, M. Johnson, D. Sullivan  
6 By: Representatives V. Flowers, Boyd, M. Gray, Milligan, Vaught  
7

## For An Act To Be Entitled

9 AN ACT TO ESTABLISH A PATH TO RESTORATION OF THE  
10 RIGHT TO POSSESS A FIREARM UNDER STATE LAW AFTER A  
11 CERTAIN TIME PERIOD HAS PASSED SINCE A PERSON  
12 CONVICTED OF CERTAIN FELONIES HAS COMPLETED HIS OR  
13 HER SENTENCE; TO PROVIDE FOR THE DISCHARGE,  
14 DISMISSAL, AND SEALING OF A FELONY CONVICTION; AND  
15 FOR OTHER PURPOSES.  
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17

## Subtitle

18 TO ESTABLISH A PATH TO RESTORATION OF THE  
19 RIGHT TO POSSESS A FIREARM; AND TO  
20 PROVIDE FOR THE DISCHARGE, DISMISSAL, AND  
21 SEALING OF A FELONY CONVICTION.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 5-73-103(a), concerning the elements of the  
28 offense of possession of a firearm by certain persons, is amended to read as  
29 follows:

30 (a) Except as provided in subsection (d) of this section or § 16-90-  
31 1501 et seq. or unless authorized by and subject to ~~such~~ conditions ~~as~~  
32 prescribed by the Governor, or his or her designee, ~~or~~ the United States  
33 Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other bureau or  
34 office designated by the United States Department of Justice, ~~no~~ a person  
35 shall not possess or own ~~any~~ a firearm ~~who~~ if he or she has been:

36 (1) Convicted of a felony;



- (2) Adjudicated mentally ill; or
- (3) Committed involuntarily to ~~any~~ a mental institution.

SECTION 2. Arkansas Code Title 16, Chapter 90, is amended to add an additional subchapter to read as follows:

Subchapter 15 – Firearm Right Restoration

16-90-1501. Scope.

(a) This subchapter concerns the discharge, dismissal, and sealing of a person’s state felony conviction that prohibits the person from lawfully possessing a firearm under state law.

(b) This subchapter is separate and distinct from the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

16-90-1502. Definitions.

As used in this subchapter:

(1) “Completion of a person’s sentence” means that the person, after being found guilty of a felony:

(A) Paid his or her fine, court costs, or other monetary obligation as defined in § 16-13-701 in full, unless the obligation has been excused by the sentencing court;

(B) Served any time in county or regional jail, a Division of Community Correction facility, or a Division of Correction facility in full; and

(C) If applicable:

(i) Has been discharged from probation or parole;

(ii) Completed any suspended sentence;

(iii) Paid any court-ordered restitution;

(iv) Completed any court-ordered community service;

(v) Paid any driver’s license suspension reinstatement fees, if a driver’s license suspension reinstatement fee was assessed as a result of the person’s arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense;

(vi) Completed all other driver’s license reinstatement requirements, if a driver’s license suspension was imposed as a

1 result of the person's arrest, plea of guilty or nolo contendere, or a  
2 finding of guilt for the offense; and

3 (vii) Completed any vocational or technical  
4 education or training program that was required as a condition of the  
5 person's parole or probation;

6 (2) "Conviction":

7 (A) Includes the following, after the final act of  
8 judgment:

9 (i) A plea of guilty or nolo contendere, unless  
10 entered pursuant to court-ordered probation described in subdivision  
11 (2)(B)(iv) of this section, by a person formally charged with an offense;

12 (ii) A finding of guilt, unless entered pursuant to  
13 court-ordered probation described in subdivision (2)(B)(iv) of this section,  
14 by a judge or jury after a trial;

15 (iii) A finding of guilt, unless entered pursuant to  
16 court-ordered probation described in subdivision (2)(B)(iv) of this section,  
17 after entry of a plea of nolo contendere;

18 (iv) A sentence of supervised probation on a felony  
19 charge;

20 (v) A suspended imposition of sentence, as defined  
21 in § 16-93-1202, with a fine;

22 (vi) A sentence under § 16-93-1201 et seq.;

23 (vii) A suspended sentence that is revocable and can  
24 subject the person to incarceration or a fine, or both; or

25 (viii) A finding of guilt of a person whose case  
26 proceeded under § 16-93-301 et seq. and who violated the terms and conditions  
27 of § 16-93-301 et seq.; and

28 (B) Does not include:

29 (i) An order nolle prosequi;

30 (ii) A suspended imposition of sentence, as defined  
31 in § 16-93-1202, with no fine;

32 (iii) An acquittal for any reason;

33 (iv) An order that the defendant enter a  
34 diversionary program that requires him or her to accomplish certain court-  
35 ordered objectives but that does not result in a finding of guilt if the  
36 program is successfully completed;

1 (v) A court-ordered probationary period under:

2 (a) The former § 5-64-413; or

3 (b) Section 16-93-301 et seq.;

4 (vi) The entry of a plea of guilty or nolo

5 contendere without the court's making a finding of guilt or entering a

6 judgment of guilt with the consent of the defendant or the resultant

7 discharge, dismissal, and sealing of the defendant as prescribed by § 16-93-

8 301 et seq.;

9 (vii) The entry of a directed verdict by a court at

10 trial; or

11 (viii) The dismissal of a charge either with or

12 without prejudice;

13 (3) "Court" means a sentencing circuit court, unless otherwise

14 specifically identified;

15 (4) "Discharge, dismissal, and sealing" means the sentencing

16 circuit court retroactively discharges, dismisses, and seals a person's

17 felony conviction, the effect of which is that the felony conviction is

18 erased from the persons' criminal history to the extent that it never

19 occurred;

20 (5) "Discharged, dismissed, and sealed" means a case has

21 resulted in a successful discharge, dismissal, and sealing under this

22 subchapter;

23 (6) "Sentence" means the outcome formally entered by a court

24 upon a person in criminal proceedings;

25 (7) "Uniform order" means a uniform order to discharge, dismiss,

26 and seal a conviction that prohibits the person from lawfully possessing a

27 firearm under state law; and

28 (8) "Uniform petition" means a uniform petition to discharge,

29 dismiss, and seal a conviction that prohibits the person from lawfully

30 possessing a firearm under state law.

31  
32 16-90-1503. Convictions prohibiting person from possessing firearm

33 eligible for discharge, dismissal, and sealing.

34 (a) Unless prohibited under this section, a person may file a uniform

35 petition under this subchapter ten (10) years or more after the completion of

36 the person's sentence for any felony that is not a:

1           (1) Homicide offense, § 5-10-101 et seq.;

2           (2) Felony that requires a person to register as a sex offender  
3 under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; or

4           (3) Felony involving violence under § 5-4-501(d)(2).

5           (b)(1) A person may file only one (1) uniform petition during his or  
6 her life.

7           (2) A person filing a uniform petition may petition to  
8 discharge, dismiss, and seal a felony and any related felonies that occurred  
9 out of the same course of conduct or criminal episode but may not petition to  
10 discharge, dismiss, and seal multiple felonies that have no causal  
11 connection.

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13           16-90-1504. Procedure.

14           (a)(1) A person who is eligible to have a conviction discharged,  
15 dismissed, and sealed and have his or her rights to lawfully possess a  
16 firearm under state law restored under this subchapter may file a uniform  
17 petition that includes a request to reinvest jurisdiction in the circuit  
18 court in the county in which the offense was committed and in which the  
19 person was convicted for the offense or offenses he or she is petitioning to  
20 have discharged, dismissed, and sealed.

21           (2)(A) A circuit court shall consider the request to reinvest  
22 jurisdiction if the person has completed all the requirements under this  
23 subchapter.

24           (B) The merits of a uniform petition may be considered  
25 only after the circuit court reinvests jurisdiction in the circuit court.

26           (C) The circuit court upon reinvestment of jurisdiction  
27 may not consider any other matters concerning the person filing the uniform  
28 petition not otherwise covered under this subchapter.

29           (b)(1)(A) A copy of the uniform petition shall be served upon the  
30 prosecuting attorney for the county in which the uniform petition is filed  
31 and the arresting agency, if the arresting agency is a named party, within  
32 three (3) days of the filing of the uniform petition.

33           (B) It is not necessary to make the arresting agency a  
34 party to the action.

35           (2)(A) The prosecuting attorney may file a notice opposing a  
36 uniform petition with the court setting forth reasons for the opposition to

1 the uniform petition.

2 (B) A court may not sign a uniform order granting relief  
3 without a hearing and may not grant the uniform petition until thirty (30)  
4 days have passed since the uniform petition was served on the prosecuting  
5 attorney.

6 (3)(A) If after a hearing the court determines that the felony  
7 conviction shall be discharged, dismissed, and sealed, the uniform order  
8 shall be entered and filed with the circuit court clerk.

9 (B)(i) The circuit court clerk with whom a uniform order  
10 is filed shall certify copies of the uniform order to the prosecuting  
11 attorney who filed the underlying charges, the arresting agency, the Arkansas  
12 Crime Information Center, and, if applicable, any district court in which the  
13 person appeared before the transfer or appeal of the case to circuit court.

14 (ii) The Administrative Office of the Courts shall  
15 only accept certified copies of the uniform orders filed in circuit court.

16 (c)(1) The circuit court clerk and, if applicable, the district court  
17 clerk for the district court in which the person appeared before the transfer  
18 or appeal of the case to circuit court shall:

19 (A) Remove all petitions, orders, docket sheets, receipts,  
20 and documents relating to the felony conviction;

21 (B) Place the records described in subdivision (c)(1)(A)  
22 of this section in a file; and

23 (C) Sequester the records described in subdivision  
24 (c)(1)(A) of this section in a separate and confidential holding area within  
25 the clerk's office.

26 (2)(A) A docket sheet shall be prepared to replace the docket  
27 sheet containing information pertaining to the discharged, dismissed, and  
28 sealed felony conviction.

29 (B) The replacement docket sheet shall contain the docket  
30 number, a statement that the felony conviction has been discharged,  
31 dismissed, and sealed, and the date that the order to discharge, dismiss, and  
32 seal the felony conviction was issued.

33 (3) All indices to the file of the person with a discharged,  
34 dismissed, and sealed felony conviction shall be maintained in a manner to  
35 prevent general access to the identification of the person.

36 (d) The prosecuting attorney shall:

1           (1) Remove the entire case file and documents or other items  
2 related to the felony conviction;

3           (2) Place the records described in subdivision (d)(1) of this  
4 section in a file; and

5           (3) Sequester the records described in subdivision (d)(1) of  
6 this section in a confidential holding area within his or her office.

7           (e) The arresting agency shall:

8           (1) Remove its entire record file and documents or other items  
9 relating to the felony conviction, including any evidence still in the  
10 arresting agency's possession;

11           (2) Place the records described in subdivision (e)(1) of this  
12 section in a file; and

13           (3) Sequester the records described in subdivision (e)(1) of  
14 this section in a confidential holding area within the arresting agency.

15           (f) Upon notification of a uniform order, all circuit clerks, district  
16 clerks, arresting agencies, and other criminal justice agencies maintaining  
17 records in a computer-generated database shall either segregate the entire  
18 record, including receipts, into a separate file or ensure by other  
19 electronic means that the discharged, dismissed, and sealed felony conviction  
20 shall not be available for general access unless otherwise authorized by law.

21  
22           16-90-1505. Uniform petition and uniform order.

23           (a) The Arkansas Crime Information Center shall adopt and provide a  
24 uniform petition and uniform order to be used by a petitioner and any circuit  
25 court in this state.

26           (b) An order to discharge, dismiss, and seal a felony conviction  
27 covered by this subchapter is not effective unless the uniform order is  
28 entered.

29           (c)(1) The uniform petition shall include a statement verified under  
30 oath indicating whether the person has felony charges pending in any state or  
31 federal court and the status of the pending felony charges as well as whether  
32 the person is required to register as a sex offender under the Sex Offender  
33 Registration Act of 1997, § 12-12-901 et seq.

34           (2) The uniform petition also shall include a statement that the  
35 information contained in the uniform petition is true and correct to the best  
36 of the petitioner's knowledge.

1 (d) The uniform order shall contain, at a minimum, the following data:

2 (1) The person's full name, race, gender, and date of birth;

3 (2) The person's full name at the time of arrest and  
4 adjudication of guilt, if applicable, if different from the person's current  
5 name;

6 (3) The felony offense for which the person was adjudicated  
7 guilty and that resulted in his or her right to lawfully possess a firearm  
8 under state law, and the date of the disposition;

9 (4) The identity of the sentencing court;

10 (5) The provision under this subchapter that provides for  
11 discharging and dismissing of the felony conviction, if applicable;

12 (6) The specific felony conviction or convictions to be  
13 discharged, dismissed, and sealed;

14 (7) The arrest tracking number;

15 (8) The system identification number (SID); and

16 (9) The Federal Bureau of Investigation number, if known.

17  
18 16-90-1506. Burden of proof – Standard of review.

19 (a) For a uniform petition filed under this subchapter, unless the  
20 circuit court is presented with and finds that there is clear and convincing  
21 evidence that a felony conviction should not be discharged, dismissed, and  
22 sealed and the person's right to lawfully possess a firearm restored, the  
23 circuit court shall discharge, dismiss, and seal the felony conviction.

24 (b)(1) An appeal of the grant or denial of the uniform petition may be  
25 taken by either party.

26 (2) An appeal from the circuit court shall be taken as provided  
27 by Supreme Court rule, and the appellate court shall review the case using an  
28 abuse of discretion standard.

29  
30 16-90-1507. Release of discharged, dismissed, and sealed felony  
31 conviction records.

32 (a)(1) As used in this section, "custodian" does not mean the Arkansas  
33 Crime Information Center.

34 (2) Access to data maintained by the center shall be governed by  
35 § 12-12-1001 et seq.

36 (b) The custodian of a record of a discharged, dismissed, and sealed

1 felony conviction shall not disclose the existence of the record of a  
2 discharged, dismissed, and sealed felony conviction or release the record of  
3 a discharged, dismissed, and sealed felony conviction except when requested  
4 by:

5 (1) The person whose felony conviction was discharged,  
6 dismissed, and sealed or the person's attorney when authorized in writing by  
7 the person;

8 (2) A criminal justice agency, as defined in § 12-12-1001, and  
9 the request is accompanied by a statement that the request is being made in  
10 conjunction with:

11 (A) An application for employment with the criminal  
12 justice agency by the person whose felony conviction has been discharged,  
13 dismissed, and sealed; or

14 (B) A criminal background check under the Polygraph  
15 Examiners Licensing Act, § 17-39-101 et seq., or the Private Security Agency,  
16 Private Investigator, and School Security Licensing and Credentialing Act, §  
17 17-40-101 et seq.;

18 (3) A court, upon a showing of:

19 (A) A subsequent adjudication of guilt of the person whose  
20 felony conviction was discharged or dismissed; or

21 (B) Another good reason shown to be in the interests of  
22 justice;

23 (4) A prosecuting attorney, and the request is accompanied by a  
24 statement that the request is being made for a criminal justice purpose;

25 (5) A state agency or board engaged in the licensing of  
26 healthcare professionals;

27 (6) The center; or

28 (7) The Arkansas Commission on Law Enforcement Standards and  
29 Training.

30  
31 16-90-1508. Effect of discharge, dismissal, and sealing.

32 (a)(1) A person whose felony conviction has been discharged,  
33 dismissed, and sealed under this subchapter shall have all privileges and  
34 rights restored, including the right to lawfully possess a firearm under  
35 state law, and the conviction that has been discharged, dismissed, and sealed  
36 shall not affect any of his or her civil rights or liberties unless otherwise

1 specifically provided by law.

2 (2) A person who wants to reacquire the right to vote removed  
3 from him or her as the result of a felony conviction shall follow the  
4 procedures in Arkansas Constitution, Amendment 51, § 11.

5 (b)(1) Upon the entry of the uniform order, the person's underlying  
6 conduct shall be deemed as a matter of law never to have occurred, and the  
7 person may state that the underlying conduct did not occur and that a record  
8 of the felony for which the person was convicted was discharged, dismissed,  
9 and sealed does not exist.

10 (2) This subchapter does not prevent the use of the record of a  
11 prior felony conviction otherwise discharged, dismissed, and sealed under  
12 this subchapter for the following purposes:

13 (A) A criminal proceeding for any purpose not otherwise  
14 prohibited by law;

15 (B) Determination of offender status under the former § 5-  
16 64-413;

17 (C) Habitual offender status, § 5-4-501 et seq.;

18 (D) Impeachment upon cross-examination as dictated by the  
19 Arkansas Rules of Evidence;

20 (E) Healthcare professional licensure by a state agency or  
21 board;

22 (F) Any disclosure mandated by Rule 17, Rule 18, or Rule  
23 19 of the Arkansas Rules of Criminal Procedure; or

24 (G) Determination of certification, eligibility for  
25 certification, or of the ability to act as a law enforcement officer, by the  
26 Arkansas Commission on Law Enforcement Standards and Training.

27  
28 16-90-1509. Uniform petition and uniform order – Creation.

29 The Arkansas Crime Information Center shall develop and draft the form  
30 to be used for the uniform petition and uniform order under this subchapter.

31  
32 16-90-1510. Filing fee.

33 The circuit clerk shall not collect a fee for filing the uniform  
34 petition under this subchapter.

35  
36 16-90-1511. Retroactivity.

1       This subchapter applies to all felony convictions occurring before and  
2 after the effective date of this act.

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