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A Bill

HOUSE BILL 1013

5 By: Representatives V. Flowers, F. Allen, Crawford, Duffield, K. Ferguson, Hudson, Milligan, Nicks, J.
6 Richardson, Scott, Tosh, Vaught, Watson, *L. Johnson*
7 *By: Senators G. Stubblefield, Caldwell, A. Clark, Gilmore, Hester, Irvin, G. Leding, M. McKee, R.*
8 *Murdock*
9

For An Act To Be Entitled

11 AN ACT TO ESTABLISH A PATH TO RESTORATION OF THE
12 RIGHT TO POSSESS A FIREARM UNDER STATE LAW AFTER A
13 *TEN (10) YEAR PERIOD HAS PASSED SINCE A PERSON*
14 *CONVICTED OF CERTAIN NONVIOLENT FELONIES HAS*
15 *COMPLETED HIS OR HER SENTENCE; TO PROVIDE FOR THE*
16 *DISCHARGE, DISMISSAL, AND SEALING OF A NONVIOLENT*
17 *FELONY CONVICTION; AND FOR OTHER PURPOSES.*
18
19

Subtitle

21 *TO ESTABLISH A PATH TO RESTORATION OF THE*
22 *RIGHT TO POSSESS A FIREARM; AND TO*
23 *PROVIDE FOR THE DISCHARGE, DISMISSAL, AND*
24 *SEALING OF A NONVIOLENT FELONY*
25 *CONVICTION.*
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 *SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.*

31 *(a)(1) One (1) in three (3) United States adults, or seventy nine*
32 *million (79,000,000) adults holds a criminal record.*

33 *(2) Approximately twenty four percent (24%) of them, or*
34 *approximately nineteen million (19,000,000), have been convicted of a felony,*
35 *and ten percent (10%) of them, or approximately seven million seven hundred*
36 *thousand (7,700,000), have been imprisoned at least once in their lifetimes.*



1 (b) Both federal and Arkansas law prohibit the purchase or possession
 2 of a firearm by a person who has been convicted of a felony.

3 (c)(1) Tens of thousands of Arkansans who have committed nonviolent
 4 felonies have not only paid their debts to society but have since lived law-
 5 abiding lives for over a decade.

6 (2) Yet, those Arkansans are prohibited from purchasing and
 7 possessing a firearm to hunt, to protect their businesses, and to protect
 8 their families.

9 (d) Criminologists studying recidivism have found that felons usually
 10 have to stay out of trouble for about a decade before their risk of
 11 committing a crime equals that of other people with no criminal record.

12 (e)(1) Twenty-four (24) states provide nonviolent felons a pathway to
 13 restore their right to purchase and possess a firearm.

14 (2) In five (5) states, some nonviolent felons never lose their
 15 rights, while other states establish time frames for automatic restoration,
 16 and still others provide processes through the courts, boards, commissions,
 17 and other administrative avenues.

18 (f) With sparse research data available, an April 2008 report by the
 19 Washington State Sentencing Guidelines Commission suggests that offenders
 20 with restored gun rights in Washington state are roughly five (5) times less
 21 likely to recidivate than other offenders.

22
 23 *SECTION 2. Arkansas Code § 5-73-103(a) and (b), concerning the offense*
 24 *of possession of a firearm by certain persons, are amended to read as*
 25 *follows:*

26 (a) Except as provided in subsection (d) of this section or unless
 27 authorized by and subject to ~~such~~ conditions ~~as~~ prescribed by the Governor,
 28 or his or her designee, ~~or~~ the United States Bureau of Alcohol, Tobacco,
 29 Firearms, and Explosives, or other bureau or office designated by the United
 30 States Department of Justice, ~~no~~ a person shall not possess or own ~~any~~ a
 31 firearm ~~who~~ if he or she has been:

- 32 (1) Convicted of a felony;
 33 (2) Adjudicated mentally ill; or
 34 (3) Committed involuntarily to ~~any~~ a mental institution.

35 (b)(1) Except as provided in subdivisions (b)(2) and (3) of this
 36 section, a determination by a jury or a court that a person committed a

1 felony constitutes a conviction for purposes of subsection (a) of this
2 section even though the court suspended imposition of sentence or placed the
3 defendant on probation.

4 (2) Subdivision (b)(1) of this section does not apply to a
5 person whose case was dismissed and expunged under § 16-93-301 et seq. or §
6 16-98-303(g).

7 (3) The determination by the jury or court that the person
8 committed a felony does not constitute a conviction for purposes of
9 subsection (a) of this section if the person is subsequently granted a pardon
10 explicitly restoring the ability to possess a firearm or if the conviction is
11 discharged, dismissed, and sealed under § 16-90-1601 et seq.

12
13 SECTION 2. Arkansas Code § 5-73-309(5), concerning licensing
14 requirements for a license to carry a concealed handgun, is amended to read
15 as follows:

16 (5) Has not been convicted of a felony in a court of this state,
17 of any other state, or of the United States unless:

18 (A) The applicant is subsequently granted a pardon by the
19 Governor or the President of the United States explicitly restoring his or
20 her ability to possess a firearm;

21 (B) The applicant was sentenced prior to March 13, 1995,
22 and the record of conviction has been sealed or expunged under Arkansas law;

23 ~~or~~

24 (C) The applicant's offense was dismissed and sealed or
25 expunged under § 16-93-301 et seq. or § 16-98-303(g); or

26 (D) The applicant's offense was discharged, dismissed, and
27 sealed under § 16-90-1601 et seq.;

28
29 SECTION 3. Arkansas Code Title 16, Chapter 90, is amended to add an
30 additional subchapter to read as follows:

31
32 Subchapter 16 – Firearm Right Restoration

33
34 16-90-1601. Scope.

35 (a) This subchapter concerns the discharge, dismissal, and sealing of
36 a person's state felony conviction that prohibits the person from lawfully

1 possessing a firearm under state law.

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

4
5 16-90-1602. Definitions.

6 As used in this subchapter:

7 (1) "Completion of a person's sentence" means that the person,
8 after being found guilty of a felony, has:

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

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

15 (C) If applicable has:

16 (i) Been discharged from probation or parole;

17 (ii) Completed any suspended sentence;

18 (iii) Paid any court-ordered restitution;

19 (iv) Completed any court-ordered community service;

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

24 (vi) Completed all other driver's license
25 reinstatement requirements, if a driver's license suspension was imposed as a
26 result of the person's arrest, plea of guilty or nolo contendere, or a
27 finding of guilt for the offense; and

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

31 (2) "Conviction":

32 (A) Includes the following, after the final act of
33 judgment:

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

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

4 (iii) A finding of guilt, unless the finding was
5 entered pursuant to court-ordered probation described in subdivision
6 (2)(B)(iv) of this section, after entry of a plea of nolo contendere;

7 (iv) A sentence of supervised probation on a felony
8 charge;

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

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

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

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

17 (B) Does not include:

18 (i) An order nolle prosequi;

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

21 (iii) An acquittal for any reason;

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

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

27 (a) The former § 5-64-413; or

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

29 (vi) The entry of a plea of guilty or nolo
30 contendere without the court's making a finding of guilt or entering a
31 judgment of guilt with the consent of the defendant or the resultant
32 discharge, dismissal, and sealing of the defendant as prescribed by § 16-93-
33 301 et seq.;

34 (vii) The entry of a directed verdict by a court at
35 trial; or

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

1 without prejudice;

2 (3) "Court" means a sentencing circuit court, unless otherwise
3 specifically identified;

4 (4) "Discharge, dismissal, and sealing" means the court
5 retroactively discharges, dismisses, and seals a person's felony conviction,
6 the effect of which is that the felony conviction is erased from the person's
7 criminal history to the extent that it never occurred;

8 (5) "Discharged, dismissed, and sealed" means a case has
9 resulted in a successful discharge, dismissal, and sealing under this
10 subchapter;

11 (6) "Sentence" means the outcome formally entered by a court
12 upon a person in criminal proceedings;

13 (7) "Uniform order" means a uniform order to discharge, dismiss,
14 and seal a conviction that prohibits the person from lawfully possessing a
15 firearm under state law; and

16 (8) "Uniform petition" means a uniform petition to discharge,
17 dismiss, and seal a conviction that prohibits the person from lawfully
18 possessing a firearm under state law.

19
20 16-90-1603. Convictions prohibiting person from possessing firearm
21 eligible for discharge, dismissal, and sealing.

22 (a) Unless prohibited under this section, a person may file a uniform
23 petition under this subchapter ten (10) years or more after the completion of
24 the person's sentence for any felony that is not listed below or contained in
25 the following chapters or subchapters:

26 (1) Homicide, § 5-10-101 et seq.;

27 (2) Kidnapping and related offenses, § 5-11-101 et seq.;

28 (3) Robbery, § 5-12-101 et seq.;

29 (4) Assault and battery, § 5-13-101 et seq.;

30 (5) Sexual offenses, § 5-14-101 et seq.;

31 (6) Voyeurism offenses, § 5-16-101 et seq.;

32 (7) Death threats, § 5-17-101 et seq.;

33 (8) The Human Trafficking Act of 2013, § 5-18-101 et seq.;

34 (9) Domestic battering and assault, § 5-26-301 et seq.;

35 (10) Custody and visitation, § 5-26-501 et seq.;

36 (11) The Arkansas Protection of Children Against Exploitation

1 Act of 1979, § 5-27-301 et seq.;

2 (12) Use of children in sexual performances, § 5-27-401 et seq.;

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

4 (14) Abuse of adults, § 5-28-101 et seq.;

5 (15) Damage or destruction of property, § 5-38-101 et seq.;

6 (16) Causing a catastrophe, § 5-38-202;

7 (17) Residential burglary, § 5-39-201;

8 (18) Aggravated residential burglary, § 5-39-204;

9 (19) First degree escape, § 5-54-110, second degree escape, § 5-
10 54-111, third degree escape, § 5-54-112, and permitting escape in the first
11 degree, § 5-54-113;

12 (20) Fleeing, § 5-54-125;

13 (21) Killing or injuring animals used by law enforcement or
14 search and rescue dogs, § 5-54-126;

15 (22) Terrorism, § 5-54-201 et seq.;

16 (23) Animals, § 5-62-101 et seq.;

17 (24) Trafficking a controlled substance, § 5-64-440;

18 (25) Aggravated riot, § 5-71-202;

19 (26) Stalking, § 5-71-229;

20 (27) Weapons, § 5-73-101 et seq.;

21 (28) The Arkansas Criminal Gang, Organization, or Enterprise
22 Act, § 5-74-101 et seq.;

23 (29) A felony that requires a person to register as a sex
24 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et
25 seq.;

26 (30) A serious felony involving violence as defined in § 5-4-
27 501(c)(2) or a felony involving violence as defined in § 5-4-501(d)(2);

28 (31) An attempt, solicitation, or conspiracy to commit any of
29 the felonies listed in subdivisions (a)(1)-(30) of this section, if the
30 attempt, solicitation, or conspiracy itself is a felony; or

31 (32) A felony traffic offense committed in any type of motor
32 vehicle if the person was a holder of a commercial learner's permit or
33 commercial driver's license at the time the felony traffic offense was
34 committed.

35 (b)(1) A person may file only one (1) uniform petition during his or
36 her lifetime, with regard to a felony.

1 (2) A person filing a uniform petition may petition to
2 discharge, dismiss, and seal a felony and any related felonies that occurred
3 out of the same course of conduct or criminal episode not listed in
4 subsection (a) of this section and may not petition to discharge, dismiss,
5 and seal multiple felonies that have no causal connection.

6 (3) A person is eligible to file a uniform petition even if the
7 person had his or her conviction sealed under other law before the effective
8 date of this act.

9 16-90-1604. Procedure.

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

17 (2)(A) A circuit court shall consider the request to reinvest
18 jurisdiction if the person has completed all the requirements under this
19 subchapter.

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

22 (C) Upon reinvestment of jurisdiction, the circuit court
23 may not consider any other matters concerning the person filing the uniform
24 petition not otherwise covered under this subchapter.

25 (3) If an order of protection was entered in a proceeding
26 against the person and remains in effect at the time of the uniform petition,
27 the person is not eligible to file a uniform petition.

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

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

34 (C)(i) If the felony conviction the petitioner is seeking
35 to have discharged, dismissed, and sealed is for a violent or a sexual
36 offense, the prosecuting attorney shall notify the victim of the violent or

1 sexual offense or his or her next of kin at the last known address and
2 telephone number of the victim or his or her next of kin if the victim
3 requested notification of a proceeding under this subchapter.

4 (ii) It is the responsibility of the victim or his
5 or her next of kin to notify the prosecuting attorney of any change in:

6 (a) Address or phone number; or

7 (b) His or her desire to be notified of any
8 proceeding under this subchapter in the future.

9 (2)(A) The prosecuting attorney may file a notice opposing a
10 uniform petition with the court setting forth reasons for the opposition to
11 the uniform petition.

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

16 (C) The prosecuting attorney shall file a response to the
17 uniform petition notifying the court when a uniform petition is filed by a
18 person who used a firearm during the commission of the felony that led to the
19 felony conviction if the felony conviction was:

20 (i) A conviction for a nonviolent offense; and

21 (ii) The result of a plea bargain.

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

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

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

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

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

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

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

6 (2)(A) A docket sheet shall be prepared to replace the docket
7 sheet containing information pertaining to the discharged, dismissed, and
8 sealed felony conviction.

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

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

16 (d) The prosecuting attorney shall:

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

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

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

23 (e) The arresting agency shall:

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

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

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

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

1
2 16-90-1605. Uniform petition and uniform order.

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

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

9 (c)(1) The uniform petition shall include a statement verified under
10 oath indicating whether the person has felony charges pending in any state or
11 federal court and the status of the pending felony charges, whether the
12 person is required to register as a sex offender under the Sex Offender
13 Registration Act of 1997, § 12-12-901 et seq., and whether the person is
14 currently subject to an order of protection in this state or a similar order
15 in any other state.

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

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

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

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

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

27 (4) The identity of the sentencing court;

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

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

32 (7) The arrest tracking number;

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

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

35
36 16-90-1606. Burden of proof – Standard of review.

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

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

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

11
12 16-90-1607. Release of discharged, dismissed, and sealed felony
13 conviction records.

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

16 (2) Access to data maintained by the center shall be governed by
17 § 12-12-1001 et seq.

18 (b) The custodian of a record of a discharged, dismissed, and sealed
19 felony conviction shall not disclose the existence of the record of a
20 discharged, dismissed, and sealed felony conviction or release the record of
21 a discharged, dismissed, and sealed felony conviction except when requested
22 by:

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

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

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

32 (B) A criminal background check under the Polygraph
33 Examiners Licensing Act, § 17-39-101 et seq., or the Private Security Agency,
34 Private Investigator, and School Security Licensing and Credentialing Act, §
35 17-40-101 et seq.;

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

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

3 (B) Another good reason shown to be in the interests of
4 justice;

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

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

9 (6) The center; or

10 (7) The Arkansas Commission on Law Enforcement Standards and
11 Training.

12
13 16-90-1608. Effect of discharge, dismissal, and sealing.

14 (a) A person whose felony conviction has been discharged, dismissed,
15 and sealed under this subchapter shall have all privileges and rights
16 restored, including the right to lawfully possess a firearm under state law,
17 and the conviction that has been discharged, dismissed, and sealed shall not
18 affect any of his or her civil rights or liberties unless otherwise
19 specifically provided by law.

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

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

28 (A) A criminal proceeding for any purpose not otherwise
29 prohibited by law;

30 (B) Determination of offender status under the former § 5-
31 64-413;

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

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

35 (E) Healthcare professional licensure by a state agency or
36 board;

