

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1638

5 By: Representatives Williams, Steel
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE COMPREHENSIVE CRIMINAL RECORD
10 SEALING ACT OF 2013; TO AMEND, CONSOLIDATE, CLARIFY,
11 AND SIMPLIFY THE PROCESS FOR SEALING A PERSON'S
12 CRIMINAL RECORD UNDER CERTAIN CIRCUMSTANCES; AND FOR
13 OTHER PURPOSES.
14
15

Subtitle

16 TO ESTABLISH THE COMPREHENSIVE CRIMINAL
17 RECORD SEALING ACT OF 2013; AND TO AMEND,
18 CONSOLIDATE, CLARIFY, AND SIMPLIFY THE
19 PROCESS FOR SEALING A PERSON'S CRIMINAL
20 RECORD UNDER CERTAIN CIRCUMSTANCES.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 5-4-205(d), regarding restitution in
27 criminal cases, is amended to read as follows:

28 (d) A record of a defendant shall not be ~~expunged~~ sealed under the
29 Comprehensive Criminal Record Sealing Act of 2013, § 16-90-901 16-90-1401 et
30 seq., until all court-ordered restitution has been paid.
31

32 SECTION 2. Arkansas Code § 5-64-413 amended to read as follows:

33 5-64-413. Probation – Discharge and dismissal.

34 (a) When ~~any~~ a person who has not previously pleaded guilty or nolo
35 contendere to or been found guilty of ~~any~~ an offense under this chapter or
36 under ~~any~~ a statute of the United States or of any state relating to a



1 controlled substance pleads guilty or nolo contendere to or is found guilty
 2 of possession of a controlled substance under § 5-64-419, the court without
 3 entering a judgment of guilt and with the consent of the defendant may defer
 4 further proceedings and place the defendant on probation for a period of not
 5 less than one (1) year under such terms and conditions as may be set by the
 6 court.

7 (b) The court may require as a condition for probation that the
 8 defendant undergo an evaluative examination by a physician or medical
 9 facility approved by the court and, if warranted, undergo in-patient or out-
 10 patient treatment and rehabilitation for drug abuse.

11 (c) Upon violation of a term or condition, the court may enter an
 12 adjudication of guilt and proceed as otherwise provided.

13 (d)(1) Upon fulfillment of the terms and conditions, the court shall
 14 discharge the person and dismiss the proceedings against him or her.

15 (2) Discharge and dismissal under this section shall be without
 16 adjudication of guilt and is not a conviction for purposes of this section or
 17 for purposes of disqualifications or disabilities imposed by law upon
 18 conviction of a crime, including the additional penalties imposed for a
 19 second or subsequent conviction under § 5-64-408.

20 (3) There may be only one (1) discharge and dismissal under this
 21 section with respect to any person.

22 (4) Consistent with the procedures established in the
 23 Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., a
 24 person:

25 (A) ~~A person against~~ Against whom proceedings are
 26 discharged or dismissed may ~~seek~~ petition the court at any time to have the
 27 criminal records sealed, ~~consistent with the procedures established in § 16-~~
 28 ~~90-901 et seq.; or~~

29 (B) ~~A person who~~ Who has been placed on probation under
 30 this section for a misdemeanor offense shall have his or her record ~~expunged~~
 31 ~~under the procedures established in § 16-90-901 et seq.~~ sealed.

32
 33 SECTION 3. Arkansas Code § 12-12-1001(15), regarding crime reporting
 34 and investigation definitions, is amended as follows:

35 (15) ~~“Expunged~~ Sealed record” means a record that was ~~expunged~~ sealed
 36 under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-901 16-

1 90-1401 et seq.;

2
3 SECTION 4. Arkansas Code § 12-12-1008(d), regarding dissemination of
4 criminal history information for criminal justice purposes, is amended to
5 read as follows:

6 (d) ~~Expunged records~~ A sealed record will be made available to
7 criminal justice agencies for criminal justice purposes as other laws permit.

8
9 SECTION 5. Arkansas Code §§ 16-90-601 through 16-90-603 are repealed.
10 ~~16-90-601. Minor felony offenders subsequently pardoned for offense.~~
11 ~~Any person who committed a felony in this state while under sixteen~~
12 ~~(16) years of age, was convicted and given a suspended sentence, subsequently~~
13 ~~received a pardon for the conviction, and has not since been convicted of~~
14 ~~another criminal offense shall have the criminal record expunged by the~~
15 ~~sentencing court.~~

16
17 ~~16-90-602. Minor nonviolent felony offenders — Petition.~~

18 (a) ~~A person who is convicted of a nonviolent felony committed while~~
19 ~~the person was under the age of eighteen (18) years and who was incarcerated~~
20 ~~or whose sentence was suspended, or who was placed on probation, may petition~~
21 ~~the convicting court to have the record of the conviction expunged upon~~
22 ~~completion of the sentence or expiration of the suspension or probation~~
23 ~~period or at any time thereafter.~~

24 (b) ~~When a petition is filed with the court for expunging the record~~
25 ~~of conviction of a minor as authorized in this section, the court may enter~~
26 ~~an order expunging the record as requested in the petition if it determines~~
27 ~~that it is in the best interest of the petitioner and the state.~~

28
29 ~~16-90-603. Minor felony offenders — Expungement of record.~~

30 ~~The procedure, effect, and definition of “expungement” as used in this~~
31 ~~subchapter shall be in accordance with that established in § 16-90-901 et~~
32 ~~seq.~~

33
34 SECTION 6. Arkansas Code § 16-90-605 is repealed.

35 ~~16-90-605. Governor’s pardon — Court order — Exclusions.~~

36 (a) ~~The Governor shall notify the sentencing court upon issuing a~~

~~1 pardon and the court shall issue an order expunging the records relating to
2 the conviction of the person pardoned.~~

~~3 (b) The records relating to the conviction of a person pardoned prior
4 to July 15, 1991, shall be expunged upon a copy of the pardon's being filed
5 with the sentencing court by the person.~~

~~6 (c) This section shall not apply to a pardon issued for:~~

~~7 (1) Any offense in which the victim is a person under the age of
8 eighteen (18);~~

~~9 (2) Any sex offense; or~~

~~10 (3) An offense resulting in death or serious physical injury.~~

~~11~~
12 SECTION 7. Arkansas Code §§ 16-90-901 through § 16-90-906 are
13 repealed.

~~14 Subchapter 9 — Expungement and Sealing of Criminal Records~~

~~15 16-90-901. Definition.~~

~~16 (a)(1) As used in §§ 5-64-407, 16-90-601, 16-90-602, 16-90-605, 16-93-
17 301—16-93-303, 16-93-314, and 16-93-1207, “expunge” shall mean that the
18 record or records in question shall be sealed, sequestered, and treated as
19 confidential in accordance with the procedures established by this
20 subchapter.~~

~~21 (2) Unless otherwise provided by this subchapter, “expunge”
22 shall not mean the physical destruction of any records.~~

~~23 (3) No person who is found guilty of or pleads guilty or nolo
24 contendere to a sexual offense as defined in this section and in which the
25 victim was under the age of eighteen (18) years shall be eligible to have the
26 offense expunged under the procedures set forth in this subchapter.~~

~~27 (b) For purposes of this subchapter, “sexual offense” shall be defined
28 as conduct prohibited by § 5-14-101 et seq., §§ 5-26-202, 5-27-602, 5-27-603,
29 5-27-605, 16-93-303(a)(1)(B), and any other subsequently enacted criminal law
30 prohibiting sexual conduct with a child.~~

~~31~~
32 ~~16-90-902. Effect of expungement.~~

~~33 (a) An individual whose record has been expunged in accordance with
34 the procedures established by this subchapter shall have all privileges and
35 rights restored and shall be completely exonerated, and the record which has
36 been expunged shall not affect any of his or her civil rights or liberties~~

1 ~~unless otherwise specifically provided by law.~~

2 ~~(b) Upon the entry of the uniform order to seal records of an~~
3 ~~individual, the individual's underlying conduct shall be deemed as a matter~~
4 ~~of law never to have occurred, and the individual may state that no such~~
5 ~~conduct ever occurred and that no such records exist.~~

6
7 ~~16-90-903. Release of sealed records.~~

8 ~~(a) The custodian of the records shall not disclose the existence of~~
9 ~~such records or release such records except when requested by:~~

10 ~~(1) The individual whose records were sealed or the individual's~~
11 ~~attorney, authorized in writing by the individual;~~

12 ~~(2) A criminal justice agency, as defined in § 12-12-1001, and~~
13 ~~the request is accompanied by a statement that the request is being made in~~
14 ~~conjunction with an application for employment with such agency by the~~
15 ~~individual whose record has been sealed;~~

16 ~~(3) A court, upon a showing of a subsequent adjudication of~~
17 ~~guilt of the individual whose record has been sealed;~~

18 ~~(4) A prosecuting attorney, and such request is accompanied by a~~
19 ~~statement that the request is being made in conjunction with the prosecution~~
20 ~~of an offense; or~~

21 ~~(5) The Arkansas Crime Information Center.~~

22 ~~(b)(1) As used in this section, "custodian" shall not mean the~~
23 ~~Arkansas Crime Information Center.~~

24 ~~(2) Access to data maintained by the Arkansas Crime Information~~
25 ~~Center shall continue to be governed by § 12-12-1001 et seq.~~

26
27 ~~16-90-904. Procedure for sealing of records.~~

28 ~~(a)(1) An individual who is eligible to have an offense expunged may~~
29 ~~file a uniform petition to seal records, as described in § 16-90-905, in the~~
30 ~~circuit court or district court in the county where the crime was committed~~
31 ~~and in which the person was convicted for the offense he or she is now~~
32 ~~petitioning to have expunged.~~

33 ~~(2)(A) Unless the court is presented with and finds that there~~
34 ~~is clear and convincing evidence that a misdemeanor conviction should not be~~
35 ~~expunged under this subchapter, the court shall expunge the misdemeanor~~
36 ~~conviction for a person after the person files a petition as described in~~

1 ~~this section, except for the following offenses:~~

2 ~~(i) Negligent homicide, § 5-10-105, if it was a~~
 3 ~~Class A misdemeanor;~~

4 ~~(ii) Battery in the third degree, § 5-13-203;~~

5 ~~(iii) Indecent exposure, § 5-14-112;~~

6 ~~(iv) Public sexual indecency, § 5-14-111;~~

7 ~~(v) Sexual assault in the fourth degree, § 5-14-127;~~

8 ~~(vi) Domestic battering in the third degree, § 5-26-~~
 9 ~~305; or~~

10 ~~(vii) Driving while intoxicated, § 5-65-103.~~

11 ~~(B) An offense listed in subdivisions (a)(2)(A)(i)-(vii)~~
 12 ~~of this section;~~

13 ~~(i) May be expunged after a period of five (5) years~~
 14 ~~has elapsed since the completion of the person's sentence for that~~
 15 ~~conviction; and~~

16 ~~(ii) Shall be expunged after the period of time~~
 17 ~~required in subdivision (a)(2)(B)(i) of this section unless the court is~~
 18 ~~presented with and finds that there is clear and convincing evidence that the~~
 19 ~~misdemeanor conviction should not be expunged under this subchapter.~~

20 ~~(b)(1)(A) A copy of the uniform petition for sealing of the record~~
 21 ~~shall be served upon the prosecuting authority for the county in which the~~
 22 ~~petition is filed, the arresting agency, and any city court or district court~~
 23 ~~where the individual appeared before the transfer of the case to circuit~~
 24 ~~court.~~

25 ~~(B) It shall not be necessary to make any agency a party~~
 26 ~~to the action.~~

27 ~~(2)(A) Any person desiring to oppose the sealing of the record~~
 28 ~~shall file a notice of opposition with the court setting forth reasons within~~
 29 ~~thirty (30) days after receipt of the uniform petition or after the uniform~~
 30 ~~petition is filed, whichever is the later date.~~

31 ~~(B) If no opposition is filed, the court may grant the~~
 32 ~~petition.~~

33 ~~(C) If notice of opposition is filed, the court shall set~~
 34 ~~the matter for a hearing.~~

35 ~~(c) If the court determines that the record should be sealed, the~~
 36 ~~uniform order, as described in § 16-90-905, shall be entered and filed with~~

1 ~~the circuit clerk.~~

2 ~~(d) The circuit clerk shall certify copies of the uniform order to the~~
3 ~~prosecuting attorney who filed the underlying charges, the arresting agency,~~
4 ~~any city court or district court where the individual appeared before the~~
5 ~~transfer of the case to circuit court, the Administrative Office of the~~
6 ~~Courts, and the Arkansas Crime Information Center.~~

7 ~~(e)(1) The circuit clerk and the clerk of any city court or district~~
8 ~~court where the individual appeared before the transfer of the case to~~
9 ~~circuit court shall remove all petitions, orders, docket sheets, and~~
10 ~~documents relating to the case, place them in a file, and sequester them in a~~
11 ~~separate and confidential holding area within the clerk's office.~~

12 ~~(2)(A) A docket sheet shall be prepared to replace the sealed~~
13 ~~docket sheet.~~

14 ~~(B) The replacement docket sheet shall contain the docket~~
15 ~~number, a statement that the case has been sealed, and the date that the~~
16 ~~order to seal the record was issued.~~

17 ~~(3) All indices to the file of the individual with a sealed~~
18 ~~record shall be maintained in a manner to prevent general access to the~~
19 ~~identification of the individual.~~

20 ~~(f) Upon notification of an order to seal records, all circuit clerks,~~
21 ~~city clerks, district clerks, arresting agencies, and other criminal justice~~
22 ~~agencies maintaining such conviction records in a computer-generated database~~
23 ~~shall either segregate the entire record into a separate file or ensure by~~
24 ~~other electronic means that the sealed record shall not be available for~~
25 ~~general access unless otherwise authorized by law.~~

26
27 ~~16-90-905. Uniform petition and order to seal records.~~

28 ~~(a)(1) The Arkansas Crime Information Center shall adopt and provide a~~
29 ~~uniform petition and order to seal records that shall be used by all~~
30 ~~petitioners and by all circuit and district courts in this state.~~

31 ~~(2) No order to seal or expunge records covered by this~~
32 ~~subchapter shall be effective unless the uniform order is entered.~~

33 ~~(3)(A) The petition shall include a statement verified under~~
34 ~~oath indicating whether the petitioner has felony charges pending in any~~
35 ~~state or federal court and the status of those charges.~~

36 ~~(B) The petition shall also include a statement that the~~

1 information contained in the petition is true and correct to the best of the
 2 petitioner's knowledge, and the order shall contain, at a minimum, the
 3 following data elements:

4 (i) ~~The person's full name, race, sex, and date of~~
 5 ~~birth;~~

6 (ii) ~~The person's full name at the time of arrest~~
 7 ~~and adjudication of guilt, if different from the person's current name;~~

8 (iii) ~~The crimes for which the person was~~
 9 ~~adjudicated guilty and the date of the disposition;~~

10 (iv) ~~The identity of the court;~~

11 (v) ~~The provision under which the individual was~~
 12 ~~sentenced that provides for sealing or expungement of the record; and~~

13 (vi) ~~The specific records to be sealed.~~

14 (b)(1) ~~If no record exists in the state central repository of the~~
 15 ~~arrest for the charges in the petition, a record shall be established before~~
 16 ~~the uniform order to seal becomes effective.~~

17 (2) ~~When no record exists in the state central repository, it~~
 18 ~~shall be the duty of the petitioner and the original arresting agency to~~
 19 ~~submit fingerprint cards on the petitioner, according to § 12-12-1006 and~~
 20 ~~procedures established by the Arkansas Crime Information Center.~~

21
 22 ~~16-90-906. When no guilty verdict.~~

23 Any individual who has been charged and arrested for any criminal
 24 offense where the charges are subsequently nolle prossed or dismissed or the
 25 individual is acquitted at trial is eligible to have all arrest records,
 26 petitions, orders, docket sheets, and any other documents relating to the
 27 case expunged in accordance with the procedures defined by this subchapter
 28 and upon entry of an order of expungement may state that no such charges,
 29 arrest, and the resulting trial ever occurred.

30
 31 SECTION 8. Arkansas Code Title 16, Chapter 90, Subchapter 12, is
 32 repealed.

33 ~~Subchapter 12~~

34 ~~Encouragement of Treatment and Rehabilitation of Drug Users~~

35 ~~16-90-1201. Expungement of record.~~

36 (a) ~~The record of a felony offense for possession of a controlled~~

1 ~~substance or counterfeit substance in violation of § 5-64-419, § 5-64-441, or~~
 2 ~~the former § 5-64-401(c) shall be expunged under this section.~~

3 ~~(b) This section shall apply if:~~

4 ~~(1) The intake officer appointed by the court determines that~~
 5 ~~the defendant has a drug addiction and recommends the defendant as a~~
 6 ~~candidate for residential drug treatment;~~

7 ~~(2) The court places the defendant on probation and includes as~~
 8 ~~part of the terms and conditions of the probation that:~~

9 ~~(A) The defendant successfully complete a drug treatment~~
 10 ~~program approved by the court; and~~

11 ~~(B) The defendant remain drug free until successful~~
 12 ~~completion of probation; and~~

13 ~~(3) The defendant successfully complete the terms and conditions~~
 14 ~~of the probation.~~

15 ~~(c) Nothing in this section shall require or compel any court of this~~
 16 ~~state to order probation under this section, nor shall any defendant be~~
 17 ~~availed the benefit of this section as a matter of right.~~

18 ~~(d) This section shall be supplemental to all other laws concerning~~
 19 ~~probation and expungement.~~

20 ~~(e) As used in this section, the procedure, effect, and definition of~~
 21 ~~"expungement" shall be in accordance with that established in § 16-90-901 et~~
 22 ~~seq.~~

23
 24 SECTION 9. Arkansas Code Title 16, Chapter 90, is amended to add a new
 25 subchapter to read as follows:

26 Subchapter 14 – Comprehensive Criminal Record Sealing Act of 2013

27 16-90-1401. Title.

28 This subchapter shall be known and may be cited as the "Comprehensive
 29 Criminal Record Sealing Act of 2013".

30
 31 16-90-1402. Intent.

32 (a) The General Assembly recognizes that historically the laws of this
 33 state involving the procedure a person must follow to have his or her prior
 34 criminal history information sealed have been confusing, from the standpoint
 35 of both practicality and terminology.

36 (b) It is the intent of the General Assembly to provide in clear terms

1 in what instances and, if applicable, how a person may attempt to have his or
2 her criminal history information sealed.

3
4 16-90-1403. Scope.

5 (a) This subchapter governs all proceedings involving the sealing of
6 criminal records.

7 (b) Inconsistencies between this subchapter and any other sections
8 within the Arkansas Code in existence on the effective date of this act are
9 resolved in favor of this subchapter, except that this subchapter does not
10 apply to:

11 (1) The Arkansas Drug Court Act, § 16-98-301 et seq.;

12 (2) Extended juvenile jurisdiction records under, § 9-27-508,
13 unless the records are considered adult criminal records under § 9-27-501 et
14 seq; and

15 (3) The sealing of juvenile records.

16
17 16-90-1404. Definitions.

18 As used in this subchapter:

19 (1) "Completion of a person's sentence" means that the person, after
20 being found guilty:

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

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

27 (C) If applicable:

28 (i) Has been discharged from probation or parole;

29 (ii) Completed any suspended sentence;

30 (iii) Paid any court-ordered restitution; or

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

32 (2) "Conviction":

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

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

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

4 (iii) A finding of guilt, unless entered pursuant to
5 court-ordered probation described in subdivision (2)(B)(iv) of this section,
6 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 in §
10 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 proceeded
15 under § 16-93-301 et seq., and who violated the terms and conditions of § 16-
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 in §
20 16-93-1202, with no fine;

21 (iii) An acquittal for any reason;

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

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

27 (a) Section 5-64-413; or

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

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

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

35 (viii) The dismissal of a charge either with or without
36 prejudice;

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

3 (4)(A) "Seal" means to expunge, remove, sequester, and treat as
 4 confidential the record or records in question according to the procedures
 5 established by this subchapter.

6 (B) "Seal" does not include the physical destruction of a record
 7 of a conviction unless this subchapter requires the physical destruction of
 8 the record of a conviction;

9 (5) "Sentence" means the outcome formally entered by a court upon a
 10 person in criminal proceedings;

11 (6) "Sex offense" means:

12 (A) The same as defined in § 12-12-903; and

13 (B) A felony offense repealed by Acts 2001, No. 1738; and

14 (7) "Uniform order" means a uniform order to seal a record described
 15 in § 16-90-1414; and

16 (8) "Uniform petition" means a uniform petition to seal a record
 17 described in § 16-90-1414.

18
 19 16-90-1405. Misdemeanor or violation convictions eligible for sealing.
 20 Unless prohibited under § 16-90-1408, a person may petition a court to
 21 seal a record of a conviction after the completion of the person's sentence
 22 for:

23 (1) A violation;

24 (2) A Class C misdemeanor, Class B misdemeanor, or Class A
 25 misdemeanor; or

26 (3) An unclassified misdemeanor.

27
 28 16-90-1406. Felony convictions eligible for sealing.
 29 Unless prohibited under § 16-90-1408, a person may petition a court to
 30 seal a record of a conviction after the completion of the person's sentence
 31 for:

32 (1) A Class C felony or Class D felony;

33 (2) A felony theft offense under § 5-36-101 et seq.;

34 (3) An unclassified felony;

35 (4) An offense under § 5-64-401 et seq. that is a Class A felony
 36 or Class B felony;

1 (5) An offense under § 5-64-401 et seq. that is a Class Y felony
2 for all purposes other than disposition;

3 (6) Solicitation to commit, attempt to commit, or conspiracy to
4 commit the substantive offenses listed in subdivisions (1)-(5) of this
5 section; or

6 (7) A felony not involving violence committed while the person
7 was less than eighteen (18) years of age.

8
9 16-90-1407. Special procedures for sealing a controlled substance
10 possession conviction.

11 A person may petition the court to seal a record of a conviction for
12 possession of a controlled substance, § 5-64-419, or counterfeit substance, §
13 5-64-441, upon the completion of the person's sentence if, prior to
14 sentencing:

15 (1) The intake officer appointed by the court determines that
16 the person has a drug addiction and recommends the person as a candidate for
17 residential drug treatment;

18 (2) The court places the person on probation and includes as
19 part of the terms and conditions of the probation that:

20 (A) The person successfully complete a drug treatment
21 program approved by the court; and

22 (B) The person remain drug-free until successful
23 completion of probation; and

24 (3) The person successfully completes the terms and conditions
25 of the probation.

26
27 16-90-1408. Convictions ineligible for sealing.

28 A record of a conviction of any the following offenses is not eligible
29 to be sealed under this subchapter:

30 (1) A Class Y felony, Class A felony, or Class B felony, except
31 as provided in § 16-90-1406;

32 (2) Manslaughter, § 5-10-104;

33 (3) An unclassified felony if the maximum sentence of
34 imprisonment for the unclassified felony is more than ten (10) years;

35 (4) A sex offense;

36 (5) A felony involving violence under § 5-4-501(d)(2); and

1 (6) Driving while intoxicated, § 5-65-303.

2
3 16-90-1409. Sealing records of arrests.

4 (a) A person may petition a district court or circuit court to seal a
5 record of a prior arrest if charges have not been filed by the prosecuting
6 attorney within one (1) year of the date of the arrest.

7 (b) The petition shall be filed in the county in which the arrest was
8 made.

9
10 16-90-1410. Sealing records of nolle prosequi, dismissed cases, or
11 cases where the disposition is an acquittal.

12 (a) A person may petition to seal the records of a case in which there
13 was for any reason:

14 (1) Entry of an order nolle prosequi upon motion of the
15 prosecuting attorney after one (1) year has passed since the date of the
16 entry of the order nolle prosequi;

17 (2) Entry of an order of dismissal; or

18 (3) An acquittal, unless that acquittal was for reason of mental
19 disease or defect, § 5-2-301 et seq.

20 (b) The petition shall be filed in the court in which the order nolle
21 prosequi or order of dismissal was entered.

22
23 16-90-1411. Sealing of records for a pardoned person -- Pardons for
24 youthful felony offenders.

25 (a)(1) The Governor shall notify the court upon issuing a pardon, and
26 the court shall issue an order sealing the record of a conviction of the
27 person pardoned.

28 (2) The record of a conviction relating to the conviction of a
29 person pardoned before July 15, 1991, shall be sealed upon the filing of a
30 copy of the pardon with the court by the person.

31 (3) This section does not apply to a pardon issued for:

32 (A) Any offense in which the victim is a person under
33 eighteen (18) years of age;

34 (B) A sex offense; or

35 (C) An offense resulting in death or serious physical
36 injury.

1 (b) A person shall have his or her record of a conviction sealed by
2 the court if the person:

3 (1) Committed a felony in this state while under sixteen (16)
4 years of age;

5 (2) Was convicted and given a suspended sentence;

6 (3) Received a pardon for the conviction; and

7 (4) Has not been convicted of another criminal offense.

8 (c) This section does not prevent a person from requesting that his or
9 her criminal record be sealed under § 16-90-1405 or § 16-90-1406.

10
11 16-90-1412. Sealing of records for former prisoners.

12 A person is not prohibited from filing a petition under this subchapter
13 if:

14 (1) He or she was sentenced to the Department of Correction for
15 an offense the conviction for which he or she is now attempting to have
16 sealed; and

17 (2) The record of the conviction is eligible for sealing under
18 this subchapter.

19
20 16-90-1413. Procedure for sealing of records.

21 (a)(1) A person who is eligible to have a record sealed under this
22 subchapter may file a uniform petition described in § 16-90-1414 with the
23 court.

24 (2) If a person has previously petitioned the court for the
25 sealing of a record and that petition was subsequently denied, the person may
26 not file a uniform petition under this subchapter regarding that record until
27 one (1) year has passed since the denial of the previous 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 (2)(A) The prosecuting attorney may file a notice of opposition
35 with the court setting forth reasons for the opposition to the sealing within
36 ninety (90) days after receipt of the uniform petition or after the uniform

1 petition is filed, whichever is the later date.

2 (B)(i) If notice of opposition is not filed, the court may
3 grant the uniform petition.

4 (ii) If notice of opposition is filed, the court
5 shall set the matter for a hearing if the record for which the uniform
6 petition was filed is eligible for sealing under this subchapter unless the
7 prosecuting attorney consents to allow the court to decide the case solely on
8 the pleadings.

9 (c)(1) The court may not grant the uniform petition until ninety (90)
10 days have passed since the uniform petition was served on the prosecuting
11 attorney, although the court may deny the uniform petition at any time.

12 (2) If the court determines that the record shall be sealed
13 under the standards of § 16-90-1415, the uniform order described in § 16-90-
14 1414 shall be entered and filed with the circuit clerk.

15 (d) The circuit clerk shall certify copies of the uniform order to the
16 prosecuting attorney who filed the underlying charges, the arresting agency,
17 any city court or district court where the person appeared before the
18 transfer of the case to circuit court, the Administrative Office of the
19 Courts, and the Arkansas Crime Information Center.

20 (e)(1) The circuit clerk and the clerk of any city court or district
21 court where the person appeared before the transfer of the case to circuit
22 court shall:

23 (A) Remove all petitions, orders, docket sheets, and
24 documents relating to the record;

25 (B) Place the records described in subdivision (e)(1)(A)
26 of this section in a file; and

27 (C) Sequester the records described in subdivision
28 (e)(1)(A) of this section in a separate and confidential holding area within
29 the clerk's office.

30 (2)(A) A docket sheet shall be prepared to replace the sealed
31 docket sheet.

32 (B) The replacement docket sheet shall contain the docket
33 number, a statement that the record has been sealed, and the date that the
34 order to seal the record was issued.

35 (3) All indices to the file of the person with a sealed record
36 shall be maintained in a manner to prevent general access to the

1 identification of the person.

2 (f) The prosecuting attorney shall:

3 (1) Remove the entire case file and documents or other items
4 related to the record;

5 (2) Place the records described in subdivision (e)(1)(A) of this
6 section in a file; and

7 (3) Sequester the records described in subdivision (e)(1)(A) of
8 this section in a confidential holding area within his or her office.

9 (g) The arresting agency shall:

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

13 (2) Place the records described in subdivision (e)(1)(A) of this
14 section in a file; and

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

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

23
24 16-90-1414. Uniform petition and uniform order to seal records.

25 (a)(1) The Arkansas Crime Information Center shall adopt and provide
26 the following to be used by a petitioner and any circuit court or district
27 court in this state:

28 (A) A uniform petition to seal records; and

29 (B) A uniform order to seal records.

30 (2) An order to seal records covered by this subchapter shall
31 not be effective unless the uniform order is entered.

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

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

4 (4) The uniform order shall contain, at a minimum, the following
5 data:

6 (A) The person's full name, race, gender, and date of
7 birth;

8 (B) The person's full name at the time of arrest and
9 adjudication of guilt, if applicable, if different from the person's current
10 name;

11 (C) The offense for which the person was adjudicated
12 guilty and the date of the disposition, if applicable;

13 (D) The identity of the court;

14 (E) The provision under this subchapter that provides for
15 sealing of the record, if applicable;

16 (F) The specific records to be sealed;

17 (G) The arrest tracking number;

18 (H) The system identification (SID) number; and

19 (I) The Federal Bureau of Investigation number, if known.

20 (b)(1) If a record for the charges of the offense does not exist at
21 the center, a record shall be established before the uniform order becomes
22 effective.

23 (2) When a record does exist in the center, the petitioner and
24 the original arresting agency shall submit fingerprint cards on the
25 petitioner under § 12-12-1006 and procedures established by the center.

26
27 16-90-1415. Burden of proof – Standard of review.

28 (a) A uniform petition filed under § 16-90-1405 shall be granted if
29 the court finds by a preponderance of the evidence that doing so would
30 further the interests of justice.

31 (b)(1) A uniform petition filed under § 16-90-1406 may be granted if
32 the court finds by clear and convincing evidence that doing so would further
33 the interests of justice, considering the following factors:

34 (A) Whether the person appears likely to reoffend;

35 (B) The person's other criminal history;

36 (C) The existence of any pending charges or criminal

1 investigations involving the person;

2 (D) Input from the victim of the offense for which the
3 person was convicted, if applicable; and

4 (E) Any other information provided by the state that would
5 cause a reasonable person to consider the person a further threat to society.

6 (2) The factors listed in subdivision (b)(1) of this section are
7 not exclusive.

8 (c) A uniform petition filed under § 16-90-1407 may be granted if the
9 court finds that doing so is in the best interest of the petitioner and the
10 state.

11 (d) A uniform petition filed under § 16-90-1409 or § 16-90-1410 shall
12 be granted unless the state provides substantial evidence that doing so
13 would:

14 (1) Place the public at risk; or

15 (2) Not further the interests of justice.

16 (e) A uniform petition filed under § 16-90-1411 shall be granted if
17 the court finds that the requirements of § 16-90-1411 are met.

18 (f)(1) An appeal of the grant or denial of the uniform petition to
19 seal may be taken by either party.

20 (2) An appeal from the district court shall be taken to the
21 circuit court, which shall review the case de novo.

22 (3) An appeal from the circuit court shall be taken as provided
23 by Supreme Court rule, and the appellate court shall review the case using an
24 abuse of discretion standard.

25
26 16-90-1416. Release of sealed records.

27 (a) The custodian of a sealed record shall not disclose the existence
28 of the sealed record or release the sealed record except when requested by:

29 (1) The person whose record was sealed or the person's attorney
30 when authorized in writing by the person;

31 (2) A criminal justice agency, as defined in § 12-12-1001, and
32 the request is accompanied by a statement that the request is being made in
33 conjunction with an application for employment with the criminal justice
34 agency by the person whose record has been sealed;

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

36 (A) A subsequent adjudication of guilt of the person whose

1 record has been sealed; or

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

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

6 (5) The Arkansas Crime Information Center.

7 (b)(1) As used in this section, "custodian" does not mean the Arkansas
8 Crime Information Center.

9 (2) Access to data maintained by the center shall be governed by
10 § 12-12-1001 et seq.

11
12 16-90-1417. Effect of sealing.

13 (a)(1) A person whose record has been sealed under this subchapter
14 shall have all privileges and rights restored, and the record that has been
15 sealed shall not affect any of his or her civil rights or liberties unless
16 otherwise specifically provided by law.

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

20 (3) The effect of this subchapter does not reconfer the right to
21 carry a firearm if that right was removed as the result of a felony
22 conviction.

23 (b)(1) Upon the entry of the uniform order, the person's underlying
24 conduct shall be deemed as a matter of law never to have occurred, and the
25 person may state that the underlying conduct did not occur and that a record
26 of the person that was sealed does not exist.

27 (2) This subchapter does not prevent the use of a prior
28 conviction otherwise sealed under this subchapter for the following purposes:

29 (A) Any sentencing purpose;

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

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

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

34 (E) Any disclosure mandated by Rule 17, 18, or 19 of the
35 Arkansas Rules of Criminal Procedure.

36

1 (B) However, ~~no~~ a person who is found guilty of or pleads
2 guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et
3 seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim
4 was under eighteen (18) years of age shall not be eligible for ~~expungement or~~
5 sealing of the record under this subchapter.

6 (2) Upon violation of a term or condition, the court may enter
7 an adjudication of guilt and proceed as otherwise provided.

8 (3) ~~Nothing in this subsection shall~~ This subsection does not
9 require or compel any court of this state to establish first offender
10 procedures as provided in this section and §§ 16-93-301 and 16-93-302, ~~nor~~
11 ~~shall any defendant be availed the benefit of this section and §§ 16-93-301~~
12 ~~and 16-93-302 as a matter of right.~~

13 (b) Upon fulfillment of the terms and conditions of probation or upon
14 release by the court prior to the termination period thereof, the defendant
15 shall be discharged without court adjudication of guilt, whereupon the court
16 shall enter an appropriate order that shall effectively dismiss the case,
17 discharge the defendant, and ~~expunge~~ seal the record, if consistent with the
18 procedures established in the Comprehensive Criminal Record Sealing Act of
19 2013, § 16-90-901 16-90-1401 et seq.

20 (c) During the period of probation described in subdivision
21 (a)(1)(A)(i) of this section, a defendant is considered as not having a
22 felony conviction except for:

23 (1) Application of any law prohibiting possession of a firearm
24 by certain persons;

25 (2) A determination of habitual offender status;

26 (3) A determination of criminal history;

27 (4) A determination of criminal history scores;

28 (5) Sentencing; and

29 (6) A purpose of impeachment as a witness under Rule 609 of the
30 Arkansas Rules of Evidence.

31 (d) After successful completion of probation placed on the defendant
32 under this section, a defendant is considered as not having a felony
33 conviction except for:

34 (1) A determination of habitual offender status;

35 (2) A determination of criminal history;

36 (3) A determination of criminal history scores;

1 (4) Sentencing; and

2 (5) A purpose of impeachment as a witness under Rule 609 of the
3 Arkansas Rules of Evidence.

4 (e) The eligibility to possess a firearm of a person whose record has
5 been ~~expunged and~~ sealed under this subchapter and the Comprehensive Criminal
6 Record Sealing Act of 2013, § 16-90-901 16-90-1401 et seq., is governed by §
7 5-73-103.

8
9 SECTION 12. Arkansas Code § 16-93-304 is amended to read as follows:

10 16-93-304. Probation – First-time offenders – Arkansas Crime
11 Information Center.

12 (a) All district court judges and circuit court judges shall
13 immediately report to the Arkansas Crime Information Center, in the form
14 prescribed by the center, all probations of criminal defendants under §§ 16-
15 93-301 – 16-93-303.

16 (b) Prior to granting probation to a criminal defendant under §§ 16-
17 93-301 – 16-93-303, the court shall query the center to determine whether the
18 criminal defendant has previously been granted probation under the provisions
19 of §§ 16-93-301 – 16-93-303.

20 (c) If the center determines that an individual has utilized §§ 16-93-
21 301 – 16-93-303 more than one (1) time, the center shall notify the last
22 sentencing judge of that fact.

23 (d) During the probationary period under this subchapter, the center
24 shall report the case as pending and shall not record it as guilty until the
25 circuit court or district court enters an adjudication of guilt.

26
27 SECTION 13. Arkansas Code § 16-93-314(b)(1), regarding discharge of
28 probation, is amended to read as follows:

29 (b)(1) Subject to the provisions of §§ 5-4-501 – 5-4-504, a person
30 against whom proceedings are discharged or dismissed under subsection (a) of
31 this section may seek to have the criminal record sealed, consistent with the
32 procedures established in the Comprehensive Criminal Record Sealing Act of
33 2013, § 16-90-901 16-90-1401 et seq.

34
35 SECTION 14. Arkansas Code § 16-93-1202(10), concerning the definition
36 of "target group" for the purposes of community punishment, is amended to

1 read as follows:

2 (10)(A)(i) "Target group" means a group of offenders and offenses
3 determined to be, but not limited to, theft, theft by receiving, hot checks,
4 residential burglary, commercial burglary, failure to appear, fraudulent use
5 of credit cards, criminal mischief, breaking or entering, drug paraphernalia,
6 driving while intoxicated, fourth or subsequent offense, all other Class C or
7 Class D felonies that are not either violent or sexual and that meet the
8 eligibility criteria determined by the General Assembly to have significant
9 impact on the use of correctional resources, Class A and Class B controlled
10 substance felonies, and all other unclassified felonies for which the
11 prescribed limitations on a sentence do not exceed the prescribed limitations
12 for a Class C felony and that are not either violent or sexual.

13 (ii) Offenders committing solicitation, attempt, or conspiracy
14 of the substantive offenses listed in subdivision (10)(A)(i) of this section
15 are also included in the group.

16 (iii) ~~For the purposes of~~ As used in this subdivision (10)(A),
17 "violent or sexual" includes all offenses against the person codified in § 5-
18 10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., §
19 5-13-301 et seq., and § 5-14-101 et seq., and any offense containing as an
20 element of the offense the use of physical force, the threatened use of
21 serious physical force, the infliction of physical harm, or the creation of a
22 substantial risk of serious physical harm.

23 (iv) For the purpose of ~~an expungement or a~~ the sealing of a
24 criminal record under § 16-93-1207, "target group" includes any misdemeanor
25 conviction except a misdemeanor conviction for which the offender is required
26 to register as a sex offender or a misdemeanor conviction for driving while
27 intoxicated.

28 (B) Offenders and offenses falling within the target group population
29 may access community correction facilities pursuant to ~~§ 16-93-1206 or~~ § 16-
30 93-1208;

31

32 SECTION 15. Arkansas Code § 16-93-1207 is amended to read as follows:
33 16-93-1207. Order of court.

34 (a) Upon the sentencing or placing on probation of any person under
35 the provisions of this subchapter, the sentencing court shall issue an order
36 or commitment, whichever is appropriate, in writing, setting forth the

1 following:

2 (1) That the offender is being:

3 (A) Committed to the Department of Correction;

4 (B) Committed to the Department of Correction with

5 judicial transfer to the Department of Community Correction;

6 (C) Placed on suspended imposition of sentence;

7 (D) Placed on probation under the provisions of this

8 subchapter; or

9 (E) Committed to a county jail for a misdemeanor offense
10 committed after January 1, 2007;

11 (2) That the offender has knowledge and understanding of the
12 consequences of the sentence or placement on probation and violations
13 thereof;

14 (3) A designation of sentence or supervision length along with
15 community correction program distinctions of that sentence or supervision
16 length;

17 (4) Any applicable terms and conditions of the sentence or
18 probation term; and

19 (5) Presentence investigation or sentencing information,
20 including, but not limited to, criminal history elements and other
21 appropriate or necessary information for correctional use.

22 (b)(1) Upon the successful completion of probation or a commitment to
23 the Department of Correction with judicial transfer to the Department of
24 Community Correction or a commitment to a county jail for one (1) of the
25 offenses targeted by the General Assembly for community correction placement,
26 the court may direct that the record of the offender be ~~expunged~~ sealed ~~of~~
27 ~~the offense of~~ with regards to the offense of which the offender was either
28 convicted or placed on probation under the condition that the offender has no
29 more than one (1) previous felony conviction and that the previous felony was
30 other than a conviction for:

31 (A) A capital offense;

32 (B) Murder in the first degree, § 5-10-102;

33 (C) Murder in the second degree, § 5-10-103;

34 (D) ~~First degree rape~~ Rape, § 5-14-103;

35 (E) Kidnapping, § 5-11-102;

36 (F) Aggravated robbery, § 5-12-103; or

1 (G) Delivering controlled substances to a minor as
2 prohibited in the former § 5-64-410 [repealed].

3 (2) The fact that a prior felony conviction has been previously
4 ~~expunged~~ sealed shall not prevent its counting as a prior conviction for the
5 purposes of this subsection.

6 (3) The procedure, effect, and definition of ~~"expungement"~~
7 "sealed" for the purposes of this subsection shall be in accordance with that
8 established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-
9 ~~90-901~~ 16-90-1401 et seq.

10
11 SECTION 16. Arkansas Code § 16-98-303(g), regarding the sealing of
12 criminal records in drug court, is amended to read as follows:

13 (g)(1) A drug court program judge, on his or her own motion or upon a
14 request from an offender, may order ~~expungement and~~ dismissal of a case and
15 the sealing of the record if:

16 (A) The offender has successfully completed a drug court
17 program, as determined by the drug court program judge;

18 (B) The offender has received aftercare programming;

19 (C) The drug court program judge has received a recommendation
20 from the prosecuting attorney for ~~expungement and~~ dismissal of the case and
21 the sealing of the record; and

22 (D) The drug court program judge, after considering the
23 offender's past criminal history, ~~feels expungement and~~ determines that
24 dismissal of the case and the sealing of the record is appropriate.

25 (2)(A) Except as provided in subdivision (g)(2)(B) of this section, if
26 the offender has ~~plead~~ pleaded guilty or nolo contendere to or has been found
27 guilty of an offense falling within a target group under § 16-93-
28 1202(10)(A)(i) in another Arkansas court, the drug court program judge may
29 order ~~expungement and~~ sealing and dismissal of the offense falling within a
30 target group with the written concurrence of the other Arkansas court.

31 (B) The following offenses ~~shall not be~~ are not eligible for
32 ~~expungement~~ sealing under subdivision (g)(2)(A) of this section:

33 (i) Residential burglary, § 5-39-201(a);

34 (ii) Commercial burglary, § 5-39-201(b);

35 (iii) Breaking or entering, § 5-39-202; and

36 (iv) The fourth and subsequent offense of driving while

1 intoxicated, § 5-65-103.

2 (3) Unless otherwise ordered by the drug court program judge,
3 ~~expungement~~ sealing under this subsection shall be as described in the
4 Comprehensive Criminal Record Sealing Act of 2013, § ~~16-90-901~~ 16-90-1401 et
5 seq.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36