

Hall of the House of Representatives
89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of House Bill No. 1638

TO ESTABLISH THE COMPREHENSIVE CRIMINAL RECORD SEALING ACT OF 2013; AND TO AMEND,
CONSOLIDATE, CLARIFY, AND SIMPLIFY THE PROCESS FOR SEALING A PERSON'S CRIMINAL
RECORD UNDER CERTAIN CIRCUMSTANCES.

Amendment No. 1 to House Bill No. 1638

Amend House Bill No. 1638 as originally introduced:

Delete everything after the enacting clause and substitute:

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

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

SECTION 2. Arkansas Code § 5-64-413 is repealed.

~~5-64-413. Probation—Discharge and dismissal.~~

~~(a) When any person who has not previously pleaded guilty or nolo contendere or been found guilty of any offense under this chapter or under any statute of the United States or of any state relating to a controlled substance pleads guilty or nolo contendere to or is found guilty of possession of a controlled substance under § 5-64-419, the court without entering a judgment of guilt and with the consent of the defendant may defer further proceedings and place the defendant on probation for a period of not less than one (1) year under such terms and conditions as may be set by the court.~~

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

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

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

~~(2) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for a~~



~~second or subsequent conviction under § 5-64-408.~~

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

~~(4)(A) A person against whom proceedings are discharged or dismissed may seek to have the criminal records sealed, consistent with the procedures established in § 16-90-901 et seq.~~

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

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

(15) “Expunged Sealed record” means a record that was expunged sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-901 16-90-1401 et seq.;

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

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

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

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

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

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

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

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

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

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

~~(a) The Governor shall notify the sentencing court upon issuing a pardon and the court shall issue an order expunging the records relating to the conviction of the person pardoned.~~

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

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

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

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

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

SECTION 7. SECTION 7. Arkansas Code §§ 16-90-901 – 16-90-906, as amended by Acts 2013, No. 282, are repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) A prosecuting attorney, and such request is accompanied by a~~

~~statement that the request is being made in conjunction with the prosecution of an offense; or~~

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

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

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

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

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

~~(2)(A) Unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that a misdemeanor conviction should not be expunged under this subchapter, the circuit court or district court shall expunge the misdemeanor conviction for a person after the person files a petition as described in this section, except for the following offenses:~~

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

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

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

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

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

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

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

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

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

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

~~(3)(A) The circuit clerk or district court clerk shall collect a fee of fifty dollars (\$50.00) for filing the uniform petition to seal records unless the petitioner is indigent and the fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.~~

~~(B) The circuit clerk or district court clerk shall remit:~~

~~(i) One half (1/2) of the fee by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the State Administration of Justice Fund; and~~

~~(ii) The remaining one half (1/2) of the fee remitted as follows:~~

~~(a) If collected in circuit court, to the~~

~~county treasurer to be deposited into the county general fund by the tenth day of each month;~~

~~(b) If collected in district court, to the treasury of each political subdivision that contributes to the expenses of the district court based on the percentage of the expenses contributed by the political subdivision by the tenth day of each month; or~~

~~(c) In a district court funded solely by the county, to the county treasurer of the county in which the district court is located to be deposited into the county general fund by the tenth day of each month.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) The petition shall also include a statement that the information contained in the petition is true and correct to the best of the petitioner's knowledge, and the order shall contain, at a minimum, the following data elements:~~

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

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

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

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

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

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

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

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

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

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

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

~~Subchapter 12~~

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

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

~~(a) The record of a felony offense for possession of a controlled substance or counterfeit substance in violation of § 5-64-419, § 5-64-441, or the former § 5-64-401(c) shall be expunged under this section.~~

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

~~(1) The intake officer appointed by the court determines that the defendant has a drug addiction and recommends the defendant as a~~

~~candidate for residential drug treatment;~~

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

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

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

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

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

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

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

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

Subchapter 14 – Comprehensive Criminal Record Sealing Act of 2013

16-90-1401. Title.

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

16-90-1402. Intent.

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

(b) It is the intent of the General Assembly to provide in clear terms in what instances and, if applicable, how a person may attempt to have his or her criminal history information sealed.

16-90-1403. Scope.

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

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

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

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

(3) The sealing of juvenile records.

(c)(1) A court may hear a proceeding under this subchapter only if a uniform petition is initially filed by the petitioner.

(2) A court may only use a uniform order if the court decides to seal a criminal record under this subchapter.

16-90-1404. Definitions.

As used in this subchapter:

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

(A) Has 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 Department of Community Correction facility, or a Department 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; and

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

(2) "Conviction":

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

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

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

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

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

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

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

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

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

(B) Does not include:

(i) An order nolle prosequi;

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

(iii) An acquittal for any reason;

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

(v) A court-ordered probationary period under:

(a) The former § 5-64-413; or

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

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

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

or

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

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

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

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

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

(6) "Sex offense" means:

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

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

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

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

16-90-1405. Eligibility to file a uniform petition to seal a misdemeanor offense or violation.

(a) A person is eligible to file a uniform petition under this subchapter to seal his or her record of a misdemeanor or violation sixty (60) days after:

(1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution;

(2) Full payment of court costs; and

(3) Full payment of driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest or conviction for the misdemeanor or violation.

(b) There is not a limit to the number of times a person may file a uniform petition to seal his or her record of a misdemeanor or violation, except that the person may not file:

(1) A new uniform petition to seal one of the following criminal offenses until after a period of five (5) years has elapsed since the completion of the person's sentence for the conviction:

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

(B) Battery in the third degree, § 5-13-203;

(C) Indecent exposure, § 5-14-112;

(D) Public sexual indecency, § 5-14-111;

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

- (F) Domestic battering in the third degree, § 5-26-305; or
- (G) A misdemeanor violation of § 5-65-103;

(2) A new uniform petition to seal a criminal offense listed in subdivision (b)(1)(A) – (G) of this section before one (1) year from the date of the order denying the previous uniform petition;

(3) A new uniform petition to seal any other misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to seal the misdemeanor or violation;

(4) A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or

(5) A new uniform petition to seal a misdemeanor or violation under this section if:

(A) The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and

(B) The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.

(c) Except as provided in subsection (b) of this section, a person is eligible to file a uniform petition to seal a misdemeanor or violation under this section even if his or her misdemeanor or violation occurred before the effective date of this act.

16-90-1406. Felony convictions eligible for sealing.

Unless prohibited under § 16-90-1408, a person may petition a court to seal a record of a conviction after five (5) years has elapsed since the completion of the person's sentence for:

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

(2) An unclassified felony;

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

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

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

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

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

(1) An intake officer appointed by the court, where applicable, determines that the person has a drug addiction and recommends the person as a candidate for residential drug treatment;

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

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

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

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

16-90-1408. Felony convictions ineligible for sealing.

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

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

(2) Manslaughter, § 5-10-104;

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

(4) A felony sex offense;

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

(6) A felony for which a person served any portion of his or her sentence as an inmate in the Department of Correction.

(b)(1) A felony traffic offense committed in any type of motor vehicle if the person was a holder of a commercial learner's permit or commercial driver license at the time the felony offense was committed is not eligible for sealing under this subchapter.

(2) As used in this subsection, "traffic offense" does not include a parking violation, vehicle weight violation, or vehicle defect violation.

16-90-1409. Sealing records of arrests.

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

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

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

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

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

(2) Entry of an order of dismissal;

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

(4) A decision by the prosecuting attorney not to file charges.

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

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

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

(2) The record of a conviction relating to the conviction of a

person pardoned before July 15, 1991, shall be sealed upon the filing of a copy of the pardon with the court by the person.

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

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

(B) A sex offense; or

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

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

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

(2) Was convicted and given a suspended sentence;

(3) Received a pardon for the conviction; and

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

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

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

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

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

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

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

(a)(1) A person who is eligible to have a record sealed under this subchapter may file a uniform petition in the circuit court or district court in the county where the offense was committed and in which the person was convicted for the offense he or she is now petitioning to have sealed.

(2) Except as provided for in § 16-90-1405, if a person has previously petitioned the court for the sealing of a record and that petition was subsequently denied, the person may not file a uniform petition under this subchapter regarding that record until one (1) year has passed since the denial of the previous petition.

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

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

(2)(A) The prosecuting attorney may file a notice of opposition with the court for a petition seeking to seal a record of an eligible misdemeanor conviction or violation setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

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

(ii) If notice of opposition is filed, the court shall set the matter for a hearing if the record for which the uniform

petition was filed is eligible for sealing under this subchapter unless the prosecuting attorney consents to allow the court to decide the case solely on the pleadings.

(3)(A) The prosecuting attorney may file a notice of opposition with the court for a petition seeking to seal a record of an eligible felony conviction setting forth reasons for the opposition to the sealing.

(B) A court may not sign a uniform order sealing an eligible felony conviction without a hearing.

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

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

(d)(1) The circuit court clerk shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, the Arkansas Crime Information Center, and, if applicable, any district court where the person appeared before the transfer or appeal of the case to circuit court.

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

(e)(1) The circuit court clerk and, if applicable, the district court clerk where the person appeared before the transfer or appeal of the case to circuit court shall:

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

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

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

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

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

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

(f) The prosecuting attorney shall:

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

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

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

(g) The arresting agency shall:

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

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

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

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

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

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

(A) A uniform petition to seal records; and

(B) A uniform order to seal records.

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

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

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

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

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

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

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

(D) The identity of the court;

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

(F) The specific records to be sealed;

(G) The arrest tracking number;

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

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

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

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

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

(a) For a uniform petition filed under § 16-90-1405, unless the circuit court or district court is presented with and finds that there is clear and convincing evidence that a misdemeanor or violation conviction

should not be sealed under this subchapter, the circuit court or district court shall seal the misdemeanor or violation conviction for a person after the person files a petition as described in this section.

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

- (A) Whether the person appears likely to reoffend;
- (B) The person's other criminal history;
- (C) The existence of any pending charges or criminal investigations involving the person;
- (D) Input from the victim of the offense for which the person was convicted, if applicable; and
- (E) Any other information provided by the state that would cause a reasonable person to consider the person a further threat to society.

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

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

(d) A uniform petition filed under § 16-90-1409 or § 16-90-1410 shall be granted unless the state shows by a preponderance of the evidence that doing so would:

- (1) Place the public at risk; or
- (2) Not further the interests of justice.

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

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

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

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

16-90-1416. Release of sealed records.

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

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

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

(3) A court, upon a showing of:

(A) A subsequent adjudication of guilt of the person whose record has been sealed; or

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

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

(5) The Arkansas Crime Information Center.

(b)(1) As used in this section, "custodian" does not mean the Arkansas

Crime Information Center.

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

16-90-1417. Effect of sealing.

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

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

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

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

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

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

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

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

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

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

16-90-1418. Uniform petition and uniform order – Creation.

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

16-90-1419. Filing fee.

(a) The circuit clerk or district court clerk shall collect a fee of fifty dollars (\$50.00) for filing the uniform petition unless the petitioner is indigent and the fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.

(b) The circuit clerk or district court clerk shall remit:

(1) One-half (1/2) of the fee by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the State Administration of Justice Fund; and

(2) The remaining one-half (1/2) of the fee as follows:

(A) If collected in circuit court, to the county treasurer to be deposited into the county general fund by the tenth day of each month;

(B) If collected in district court, to the treasury of each political subdivision that contributes to the expenses of the district court based on the percentage of the expenses contributed by the political

subdivision by the tenth day of each month; or

(C) In a district court funded solely by the county, to the county treasurer of the county in which the district court is located to be deposited into the county general fund by the tenth day of each month.

SECTION 10. Arkansas Code § 16-93-301 is amended to read as follows:
16-93-301. Definitions.

As used in this subchapter, "~~expungement~~" "sealing" means the procedure and effect as defined in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-901(a) 16-90-1401 et seq.

SECTION 11. Arkansas Code § 16-93-303 is amended to read as follows:
16-93-303. Probation – First time offenders – Procedure.

(a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court.

(ii) A sentence of a fine not exceeding three thousand five hundred dollars (\$3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c)-(e) of this section.

(iii) A serious felony involving violence or a felony involving violence as provided in ~~§ 5-4-501~~ § 5-4-501 shall not be eligible for ~~expungement~~ sealing of record under this subchapter.

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

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

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

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

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

(1) Application of any law prohibiting possession of a firearm

by certain persons;

- (2) A determination of habitual offender status;
- (3) A determination of criminal history;
- (4) A determination of criminal history scores;
- (5) Sentencing; and
- (6) A purpose of impeachment as a witness under Rule 609 of the

Arkansas Rules of Evidence.

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

- (1) A determination of habitual offender status;
- (2) A determination of criminal history;
- (3) A determination of criminal history scores;
- (4) Sentencing; and
- (5) A purpose of impeachment as a witness under Rule 609 of the

Arkansas Rules of Evidence.

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

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

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

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

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

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

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

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

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

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

(10)(A)(i) "Target group" means a group of offenders and offenses determined to be, but not limited to, theft, theft by receiving, hot checks,

residential burglary, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, all other Class C or Class D felonies that are not either violent or sexual and that meet the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources, Class A and Class B controlled substance felonies, and all other unclassified felonies for which the prescribed limitations on a sentence do not exceed the prescribed limitations for a Class C felony and that are not either violent or sexual.

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

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

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

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

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

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

- (1) That the offender is being:
 - (A) Committed to the Department of Correction;
 - (B) Committed to the Department of Correction with judicial transfer to the Department of Community Correction;
 - (C) Placed on suspended imposition of sentence;
 - (D) Placed on probation under the provisions of this subchapter; or
 - (E) Committed to a county jail for a misdemeanor offense committed after January 1, 2007;
- (2) That the offender has knowledge and understanding of the consequences of the sentence or placement on probation and violations thereof;
- (3) A designation of sentence or supervision length along with community correction program distinctions of that sentence or supervision length;
- (4) Any applicable terms and conditions of the sentence or probation term; and
- (5) Presentence investigation or sentencing information,

including, but not limited to, criminal history elements and other appropriate or necessary information for correctional use.

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

- (A) A capital offense;
- (B) Murder in the first degree, § 5-10-102;
- (C) Murder in the second degree, § 5-10-103;
- (D) ~~First degree rape~~ Rape, § 5-14-103;
- (E) Kidnapping, § 5-11-102;
- (F) Aggravated robbery, § 5-12-103; or
- (G) Delivering controlled substances to a minor as

prohibited in the former § 5-64-410 [repealed].

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

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

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

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

- (A) The offender has successfully completed a drug court program, as determined by the drug court program judge;
- (B) The offender has received aftercare programming;
- (C) The drug court program judge has received a recommendation from the prosecuting attorney for ~~expungement and~~ dismissal of the case and the sealing of the record; and
- (D) The drug court program judge, after considering the offender's past criminal history, ~~feels expungement and~~ determines that dismissal of the case and the sealing of the record is appropriate.

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

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

- (i) Residential burglary, § 5-39-201(a);
- (ii) Commercial burglary, § 5-39-201(b);
- (iii) Breaking or entering, § 5-39-202; and

(iv) The fourth and subsequent offense of driving while intoxicated, § 5-65-103.

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

SECTION 17. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that currently the law is silent as to who is eligible to have his or her criminal record sealed; that a citizen of Arkansas might not know that he or she is eligible to have a criminal conviction sealed; and that this act is immediately necessary because the statutes permitting a person to have a criminal conviction sealed exist to allow a citizen of Arkansas with a past criminal conviction to move on with his or her life without the cloud of being a person with a criminal record. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read _____
By: Representative Williams
BPG/LNS - 04-05-2013 14:41:34
BPG691

Chief Clerk