

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Luker**
5 **By: Senator Dowd**

A Bill

ACT 998 OF 1995
HOUSE BILL 2097

For An Act To Be Entitled

8 "AN ACT TO DEFINE EXPUNGEMENT AND ESTABLISH THE PROCEDURE
9 FOR THE SEALING OF CRIMINAL RECORDS; TO AMEND CURRENT
10 PROVISIONS OF ARKANSAS LAW INVOLVING EXPUNGEMENT; AND FOR
11 OTHER PURPOSES."

Subtitle

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14 "AN ACT TO DEFINE EXPUNGEMENT AND
15 ESTABLISH THE PROCEDURE FOR THE SEALING
16 OF CRIMINAL RECORDS; TO AMEND CURRENT
17 PROVISIONS OF ARKANSAS LAW INVOLVING
18 EXPUNGEMENT."

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Ark. Code 5-4-311(b) is amended to read as follows:

23 "(b) *Subject to the provisions of Sections 5-4-501 through 5-4-505, a*
24 *person against whom such proceedings are discharged or dismissed may seek to*
25 *have the criminal records sealed, consistent with the procedures established*
26 *in §§ 16-90-901 - 905."*

27

28 SECTION 2. Ark. Code 5-64-407 is amended to read as follows:

29 "§ 5-64-407. Probation - Discharge and dismissal.

30 Whenever any person who has not previously pleaded guilty or been found
31 guilty of any offense under subchapters 1-6 of this chapter or under any
32 statute of the United States or of any state relating to narcotic drugs,
33 marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to
34 or is found guilty of possession of a controlled substance under § 5-64-401,
35 with the exception of a conviction for possession of a substance listed under
36 Schedule I, the court, without entering a judgment of guilt and with the

1 consent of the accused may defer further proceedings and place him on
2 probation for a period of not less than one (1) year, under such terms and
3 conditions as may be set by the court. The court may require as a condition
4 for probation that the defendant undergo an evaluative examination by a
5 physician or medical facility approved by the court and, if warranted, undergo
6 in-patient or out-patient treatment and rehabilitation for drug abuse. Upon
7 violation of a term or condition, the court may enter an adjudication of guilt
8 and proceed as otherwise provided. Upon fulfillment of the terms and
9 conditions, the court shall discharge the person and dismiss the proceedings
10 against him. Discharge and dismissal under this section shall be without
11 adjudication of guilt and is not a conviction for purposes of this section or
12 for purposes of disqualifications or disabilities imposed by law upon
13 conviction of a crime, including the additional penalties imposed for a second
14 or subsequent conviction under § 5-64-410 [repealed]. There may be only one
15 (1) discharge and dismissal under this section with respect to any person. A
16 person against whom such proceedings are discharged or dismissed may seek to
17 have the criminal records sealed, consistent with the procedures established
18 in §§ 16-90-901 - 16-90-905."

19

20 SECTION 3. Ark. Code 16-90-601(b) is amended to read as follows:

21 "(b) The procedure, effect, and definition of _expungement_ for the
22 purpose of this section shall be in accordance with that established in §§ 16-
23 90-901 - 905."

24

25 SECTION 4. Ark. Code 16-90-603 is amended to read as follows:

26 "§ 16-90-603. Minor nonviolent felony offenders - Court order.

27 The procedure, effect, and definition of _expungement_ as used in

28 § 16-90-602 shall be in accordance with that established in §§ 16-90-901 -
29 905."

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31 SECTION 5. Ark. Code 16-90-604 is repealed.

32

33 SECTION 6. Ark. Code 16-90-605 is amended to read as follows:

34 "§ 16-90-605. Governor's pardon - Court order - Exclusions.

35 (a) Upon issuing a pardon, the Governor shall notify the sentencing

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

3

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

7 (c) This section shall not apply to a pardon issued for any offense
8 where the victim is a person under the age of eighteen (18), any sex offense,
9 or an offense resulting in death or serious physical injury.

10 (d) The procedure, effect, and definition of expungement for the
11 purposes of this section shall be in accordance with that established in §§
12 16-90-901 - 905."

13

14 SECTION 7. Chapter 90 of Title 16 of the Arkansas Code is amended by
15 inserting an additional subchapter at the end thereof to read as follows:

16 "§ 16-90-901. Definition. (a) As used in §§ 16-90-601, 16-90-602, 16-
17 90-605, 16-93-301 - 303, 5-64-407, 5-4-311, and 16-93-1207, expunge shall
18 mean that the record or records in question shall be sealed, sequestered, and
19 treated as confidential in accordance with the procedures established by this
20 subchapter.

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

23 § 16-90-902. Effect of expungement. (a) An individual whose record
24 has been expunged in accordance with the procedures established by this
25 subchapter shall have all privileges and rights restored, shall be completely
26 exonerated, and the record which has been expunged shall not affect any of his
27 civil rights or liberties, unless otherwise specifically provided for by law.

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

32 § 16-90-903. Release of sealed records. (a) The custodian of the
33 record shall not disclose the existence of such records or release such
34 records except when requested by:

35 (1) the individual whose records were sealed or the individual_s

1 attorney authorized in writing by the individual;

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

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

8 (4) a prosecuting attorney, and such request is accompanied by a
9 statement that the request is being made in conjunction with the prosecution
10 of an offense;

11 (5) the Arkansas Crime Information Center.

12 (b) As used in this section, _custodian_ shall not mean the Arkansas
13 Crime Information Center (ACIC). Access to data maintained by ACIC shall
14 continue to be governed by A.C.A. §§ 12-12-1001 et seq.

15 § 16-90-904. Procedure for sealing of records. (a) Any individual who
16 is eligible to have an offense expunged may file a uniform petition to seal
17 records, as described in § 16-90-905, with the court in the county where the
18 crime was committed.

19 (b) A copy of the uniform petition for sealing of the record shall be
20 served upon the prosecuting authority for the county in which the petition is
21 filed and upon the arresting agency; however, it shall not be necessary to
22 make any agency a party to the action. Any person desiring to oppose the
23 sealing of the record shall file a notice of opposition with the court setting
24 forth reasons within thirty (30) days after receipt of the uniform petition or
25 after the uniform petition is filed, whichever is the later date. If no
26 opposition is filed, the court may grant the petition. If notice of
27 opposition is filed, the court shall set the matter for a hearing.

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

31 (d) The clerk of the court shall certify copies of the uniform order to
32 the prosecuting attorney who filed the underlying charges, the arresting
33 agency, the Administrative Office of the Courts, and the Arkansas Crime
34 Information Center.

35 (e) The clerk of the court shall remove all petitions, orders, docket

1 sheets, and documents relating to the case, place them in a file, and
2 sequester them in a separate and confidential holding area within the clerk_s
3 office. A docket sheet shall be prepared to replace the sealed docket sheet.
4 The replacement docket sheet shall contain the docket number, a statement
5 that the case has been sealed, and the date that the order to seal the record
6 was issued. All indices to the file of the individual with a sealed record
7 shall be maintained in a manner to prevent general access to the
8 identification of the individual.

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

15 § 16-90-905. Uniform petition and order to seal records.

16 (a) The Arkansas Crime Information Center shall adopt and provide a
17 uniform petition and order to seal records which shall be used by all
18 petitioners and by all circuit and municipal courts in this state. No order
19 to seal or expunge records covered by this subchapter shall be effective
20 unless the uniform order is entered. The petition shall include a statement
21 that the information contained in the petition is true and correct to the best
22 of the petitioner_s knowledge, and the order shall, at a minimum, contain the
23 following data elements:

- 24 (1) the person_s full name, race, sex and date of birth;
- 25 (2) the person_s full name at the time of arrest and adjudication
26 of guilt, if different than the person_s current name;
- 27 (3) the crime(s) for which the person was adjudicated guilty and
28 the date of the disposition;
- 29 (4) the identity of the court;
- 30 (5) the provision under which the individual was sentenced that
31 provides for sealing or expungement of the record;
- 32 (6) the specific records to be sealed.

33 (b) If no record exists in the state central repository of the arrest
34 for the charge(s) in the petition, such record shall be established before the
35 uniform order to seal becomes effective. When no record exists in the state

1 central repository, it shall be the duty of the petitioner and the original
2 arresting agency to submit fingerprint cards on the petitioner, according to
3 § 12-12-1006, and procedures established by the Arkansas Crime Information
4 Center."

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6 SECTION 8. Ark. Code 16-93-301 is amended to read as follows:

7 "§ 16-93-301. Definition.

8 As used in §§ 16-93-301 - 16-93-303, unless the context otherwise
9 requires, the procedure, effect, and definition of expungement shall be in
10 accordance with that established in §§ 16-90-901 - 905."

11

12 SECTION 9. Ark. Code 16-93-303(b) is amended to read as follows:

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 which shall effectively dismiss the case,
17 discharge the defendant, and expunge the record, if consistent with the
18 procedures established in §§ 16-90-901 - 16-90-905."

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20 SECTION 10. Ark. Code 16-93-1207(b) is amended by inserting an
21 additional paragraph at the end thereof to read as follows:

22 "(3) The procedure, effect, and definition of expungement for the
23 purposes of this subsection shall be in accordance with that established in §§
24 16-90-901 - 905."

25

26 SECTION 11. All provisions of this act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

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30 SECTION 12. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

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