

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 744 of the Regular Session

1 State of Arkansas

As Engrossed: H3/14/07 S3/22/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 2296

4
5 By: Representatives Pate, E. Brown, Thyer, Walters

6 By: Senator R. Thompson

7
8
9 **For An Act To Be Entitled**

10 AN ACT TO CLARIFY THE APPLICABILITY OF VARIOUS
11 PROVISIONS OF THE ARKANSAS CODE REGARDING
12 EXPUNGEMENT AND SEALING OF RECORDS OF CRIMINAL
13 CONVICTIONS; AND FOR OTHER PURPOSES.

14
15 **Subtitle**

16 TO CLARIFY THE APPLICABILITY OF VARIOUS
17 PROVISIONS OF THE ARKANSAS CODE
18 REGARDING EXPUNGEMENT AND SEALING OF
19 RECORDS OF CRIMINAL CONVICTIONS.

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 *SECTION 1.* Arkansas Code Title 5, Chapter 4, Subchapter 1 is amended
25 to add an additional section to read as follows:

26 5-4-105. Expungement and sealing options.

27 (a) An expungement or sealing of the records of a criminal prosecution
28 is governed by the following provisions of law:

29 (1) If no judgment of guilt is entered as a consequence of a
30 plea of guilty or nolo contendere, eligibility for an expungement or a
31 sealing of the records of the criminal prosecution is governed by § 5-4-311,
32 § 5-64-413, or §§ 16-93-301 – 16-93-303; and

33 (2) If a judgment of guilt is entered as a consequence of a plea
34 of guilty or nolo contendere or after a finding of guilt by a judge or a
35 jury, eligibility for an expungement or a sealing of the records of the



1 criminal prosecution is governed by § 16-93-1201 et seq.

2 (b) Eligibility for an expungement or a sealing of the records of a
3 criminal prosecution that was terminated by an acquittal, dismissal, or nolle
4 prosequi is governed by § 16-90-906.

5 (c) The procedure for an expungement or a sealing of the records of a
6 criminal prosecution is governed by § 16-90-901 et seq.

7
8 SECTION 2. Arkansas Code § 16-93-303 is amended to read as follows:
9 16-93-303. Procedure.

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

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

23 (B) However, no person who is found guilty of or pleads
24 guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et
25 seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim
26 was under eighteen (18) years of age shall be eligible for expungement of the
27 record under this subchapter.

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

30 (3) Nothing in this subsection shall require or compel any court
31 of this state to establish first offender procedures as provided in §§ 16-93-
32 301 - 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-
33 301 - 16-93-303 as a matter of right.

34 (b) Upon fulfillment of the terms and conditions of probation or upon
35 release by the court prior to the termination period thereof, the defendant
36 shall be discharged without court adjudication of guilt, whereupon the court

1 shall enter an appropriate order which shall effectively dismiss the case,
2 discharge the defendant, and expunge the record, if consistent with the
3 procedures established in § 16-90-901 et seq.

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

7 (1) Application of any law prohibiting possession of a firearm
8 by certain persons;

9 (2) A determination of habitual offender status;

10 (3) A determination of criminal history;

11 (4) A determination of criminal history scores;

12 (5) Sentencing; and

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

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

18 (1) A determination of habitual offender status;

19 (2) A determination of criminal history;

20 (3) A determination of criminal history scores;

21 (4) Sentencing; and

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

24 (e) The eligibility to possess a firearm of a person whose record has
25 been expunged and sealed under this subchapter and § 16-90-901 et seq. is
26 governed by § 5-73-103.

27
28 *SECTION 3.* Arkansas Code § 16-93-1202(10), concerning the definition
29 of target group, is amended to read as follows:

30 (10)(A)(i) "Target group" means a group of offenders and
31 offenses determined to be, but not limited to, theft, theft by receiving, hot
32 checks, residential burglary, commercial burglary, failure to appear,
33 fraudulent use of credit cards, criminal mischief, breaking or entering, drug
34 paraphernalia, driving while intoxicated, fourth or subsequent offense, all
35 other Class C or Class D felonies which are not either violent or sexual and
36 which meet the eligibility criteria determined by the General Assembly to

1 have significant impact on the use of correctional resources, Class A and
 2 Class B controlled substance felonies, and all other unclassified felonies
 3 for which the prescribed limitations on a sentence do not exceed the
 4 prescribed limitations for a Class C felony and that are not either violent
 5 or sexual.

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

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

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

21
 22 *SECTION 4.* Arkansas Code § 16-93-1207 is amended to read as follows:
 23 16-93-1207. Order of court.

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

28 (1) That the offender is being:

29 (A) Committed to the Department of Correction;

30 (B) Committed to the Department of Correction with
 31 judicial transfer to the Department of Community Correction;

32 (C) Placed on suspended imposition of sentence; ~~or~~

33 (D) Placed on probation under the provisions of this
 34 subchapter; or

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

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

4 (3) A designation of sentence or supervision length along with
5 community correction program distinctions of that sentence or supervision
6 length;

7 (4) Any applicable terms and conditions of the sentence or
8 probation term; and

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

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

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

28 prohibited in § ~~5-64-701(a)(2) [repealed]~~ 5-64-410.

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

32 (3) The procedure, effect, and definition of "expungement" for
33 the purposes of this subsection shall be in accordance with that established
34 in § 16-90-901 et seq.

35
36 /s/ Pate

APPROVED: 3/30/2007