Stricken language would be deleted from and underlined language would be added to present law. Act 626 of the Regular Session

1	State of Arkansas	As Engrossed: H3/1/11 A Bill	
2	88th General Assembly	A DIII	HOUGE BUL 1606
3	Regular Session, 2011		HOUSE BILL 1608
4	D. D. C. C. W. 1.1. D.	V. II W. II . W. II .	
5	By: Representatives Nickels, Po	wers, Vines, H. Wilkins, Williams	
6		For An Act To Be Entitled	
7	AN ACT DECAT		MOD
8 9		RDING THE EXPUNGEMENT OF MISDEMEAN	NOK
10	CONVICTIONS;	AND FOR OTHER PURPOSES.	
11			
12		Subtitle	
13	REG∆RD	ING THE EXPUNGEMENT OF MISDEMEANO	nR
14	CONVIC'		
15	0011110	110110	
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17	BE IT ENACTED BY THE GEN	NERAL ASSEMBLY OF THE STATE OF AR	KANSAS:
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19	SECTION 1. Arkans	sas Code § 5-4-105 is repealed:	
20		ent and sealing options.	
21	(a) An expungemer	nt or sealing of the records of a	criminal prosecution
22	is governed by the follo	wing provisions of law:	
23	(1) If no j	judgment of guilt is entered as a	consequence of a
24	plea of guilty or nolo c	contendere, eligibility for an ex	pungement or a
25	sealing of the records of	of the criminal prosecution is go	verned by § 5-4-311,
26	§ 5-64-413, or §§ 16-93-	-301 16-93-303; and	
27	(2) If a j ı	adgment of guilt is entered as a	consequence of a plea
28	of guilty or nolo conter	ndere or after a finding of guilt	by a judge or a
29	jury, eligibility for ar	n expungement or a sealing of the	records of the
30	criminal prosecution is	governed by § 16-93-1201 et seq.	
31	(b) Eligibility f	For an expungement or a sealing o	f the records of a
32	eriminal prosecution tha	at was terminated by an acquittal	, dismissal, or nolle
33	prosequi is governed by § 16-90-906.		
34	(c) The procedure	e for an expungement or a sealing	of the records of a
35	eriminal prosecution is	governed by § 16-90-901 et seq.	
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SECTION 2. Arkansas Code § 5-64-413 is amended to read as follows: 5-64-413. Probation — Discharge and dismissal.

- (a) When any person who has not previously pleaded guilty or been 3 4 found guilty of any offense under this chapter or under any statute of the 5 United States or of any state relating to a narcotic drug, marijuana, 6 stimulant, depressant, or a hallucinogenic drug controlled substance pleads 7 guilty to or is found guilty of possession of a controlled substance under § 8 5-64-401, with the exception of a conviction for possession of a controlled 9 substance listed under Schedule I, the court without entering a judgment of guilt and with the consent of the defendant may defer further proceedings and 10 11 place the defendant on probation for a period of not less than one (1) year 12 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 outpatient treatment and rehabilitation for drug abuse.
- 17 (c) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

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

35 SECTION 3. Arkansas Code § 16-90-904(a), regarding the procedure for 36 sealing a person's criminal record, is amended to read as follows:

1	(a)(1) Any An individual who is eligible to have an offense expunged		
2	may file a uniform petition to seal records, as described in § 16-90-905,		
3	with the circuit court in the circuit or district court in the county where		
4	the crime was committed and in which the person was convicted for the offense		
5	he or she is now petitioning to have expunged in the county where the crime		
6	was committed.		
7	(2)(A) Unless the court is presented with and finds that there		
8	is clear and convincing evidence that a misdemeanor conviction should not be		
9	expunged under this subchapter, the court shall expunge all misdemeanor		
10	convictions for a person after the person files a petition as described in		
11	this section, except for the following offenses:		
12	(i) Negligent homicide, § 5-10-105, if it was a		
13	Class A misdemeanor;		
14	(ii) Battery in the third degree, § 5-13-203;		
15	(iii) Indecent exposure, § 5-14-112;		
16	(iv) Public sexual indecency, § 5-14-111;		
17	(v) Sexual assault in the fourth degree, § 5-14-127;		
18	(vi) Domestic battering in the third degree, 5-26-		
19	305; or		
20	(vii) Driving while intoxicated, § 5-65-103.		
21	(B)(i) The offenses listed in subdivision (a)(2)(A) of		
22	this section may be expunged after a period of five (5) years has elapsed		
23	since the completion of his or her sentence for those convictions; and		
24	(ii) Shall be expunged after the period of time		
25	required in subdivision (a)(2)(B)(i) of this section unless the court is		
26	presented with and finds that there is clear and convincing evidence that the		
27	misdemeanor conviction should not be expunged under this subchapter.		
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29	/s/Nickels		
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32	<u>APPROVED: 03/23/2011</u>		
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