

INTERIM STUDY PROPOSAL 2019-019

1
2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

As Engrossed: H3/11/19

A Bill

HOUSE BILL 1540

5
6 By: Representatives Boyd, Richardson, L. Johnson, Crawford, D. Whitaker, B. Smith, *K. Ferguson*

7 By: Senator M. Pitsch

8 Filed with: House Committee on Judiciary
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO ESTABLISH A PROCESS BY WHICH RECORDS OF
12 CERTAIN CRIMINAL OFFENSES ARE AUTOMATICALLY REMOVED
13 AFTER A CERTAIN PERIOD OF TIME; CONCERNING THE
14 RECORDS OF A PERSON'S CRIMINAL HISTORY; AND FOR OTHER
15 PURPOSES.

Subtitle

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19 TO ESTABLISH A PROCESS BY WHICH RECORDS
20 OF CERTAIN CRIMINAL OFFENSES ARE
21 AUTOMATICALLY REMOVED AFTER A CERTAIN
22 PERIOD OF TIME; AND CONCERNING THE
23 RECORDS OF A PERSON'S CRIMINAL HISTORY.

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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 *SECTION 1. DO NOT CODIFY. Legislative intent.*

29 *(a) It is the intent of the General Assembly to implement the*
30 *automatic record sealing process under this act for all circuit courts in*
31 *this 2019 Regular Session.*

32 *(b) It is further the intent of the General Assembly to study and*
33 *address the mechanisms and technical requirements necessary to implement*
34 *automatic record sealing for the state's district courts during the interim,*
35 *with the express goal of implementing a similar system for the state's*
36 *district courts in the 2021 Regular Session.*

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SECTION 2. Arkansas Code § 16-90-1404, concerning definitions used in conjunction with the Comprehensive Criminal Record Sealing Act of 2013, is amended to add additional subdivisions to read as follows:

(9) "Offense eligible for automatic sealing" means an offense for which a person was convicted in circuit court and is one (1) of the following offenses:

(A) A violation;

(B) A misdemeanor, except for the following misdemeanors:

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

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

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

(iv) Indecent exposure, § 5-14-112;

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

or

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

(C) A Class C felony or Class D felony that is not:

(i) A felony involving violence as defined in § 5-4-501(d)(2); or

(ii) An offense for which a person is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; and

(10)(A) "Relevant state agency database or other publicly operated or administered repository" means a publically operated or administered electronic database, computer file, compilation of physical documents, or other method of holding organized information that lists a person's criminal history information, criminal background, sentencing information, or information concerning a criminal offense adjudication that indicates that the person pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense.

(B) "Relevant state agency database or other publicly operated or administered repository" includes physical court records in the possession of a circuit court clerk or district court clerk.

1 (C) "Relevant state agency database or other publicly
2 operated or administered repository" does not include a database or
3 repository operated or administered by:

- 4 (i) The Department of Arkansas State Police;
- 5 (ii) The Department of Correction;
- 6 (iii) The Department of Community Correction; or
- 7 (iv) The Arkansas Commission on Law Enforcement
8 Standards and Training.

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10 SECTION 3. Arkansas Code Title 16, Chapter 90, Subchapter 14, is
11 amended to add an additional section to read as follows:

12 16-90-1420. Automatic sealing of information concerning certain
13 convictions after specified time period.

14 (a) A record of an offense eligible for automatic sealing shall be
15 automatically sealed from a relevant state agency database or other
16 publically operated or administered repository under procedures set out in
17 this section if the following conditions apply:

18 (1) The person would otherwise be eligible to have all records
19 of the offense sealed by a sentencing court under this subchapter;

20 (2) A period of five (5) years has elapsed from the date of the
21 person's conviction for the offense and from the person's completion of a
22 person's sentence; and

23 (3) The person has not been convicted of a felony or a Class A
24 misdemeanor since the date of the person's conviction for the offense
25 eligible for automatic sealing, even if that subsequent conviction was
26 sealed.

27 (b) This section does not prohibit a person from having his or her
28 record otherwise sealed under this subchapter.

29 (c)(1) On a monthly basis the circuit court clerk shall compile and
30 provide a list of convictions in the circuit court for an offense eligible
31 for automatic sealing in this section and transmit the list of convictions in
32 the circuit court to the prosecuting attorney.

33 (2)(A) The prosecuting attorney shall verify that the
34 convictions on the list of convictions in the circuit court are eligible for
35 automatic sealing under this section and that the persons who were convicted
36 have completed the terms and conditions of their sentences.

1 (B) The prosecuting attorney shall verify the information
2 described in subdivision (c)(2)(A) of this section within thirty (30) days of
3 the receipt of the list of convictions in the circuit court and transmit back
4 to the circuit court clerk a list of ineligible convictions based on whether
5 a period of five (5) years has elapsed since the date of the person's
6 conviction for a misdemeanor offense or whether the person has completed the
7 terms and conditions of his or her sentence for a felony conviction.

8 (C) The prosecuting attorney may object to the automatic
9 sealing of a conviction by filing a petition in the circuit court and
10 providing notice to the circuit court clerk and to the person whose
11 conviction is eligible for automatic sealing at the person's last known
12 address.

13 (D) The circuit court may grant a hearing on the
14 prosecuting attorney's objection or may decide the petition without a
15 hearing.

16 (3)(A) Upon receiving the list of ineligible convictions back
17 from the prosecuting attorney, the circuit court clerk shall remove those
18 convictions from the list of eligible convictions he or she originally
19 compiled and then transmit that revised list of eligible convictions to the
20 circuit court.

21 (B) The circuit court shall enter an order within ten (10)
22 days of receiving the list of eligible convictions from the circuit court
23 clerk ordering the circuit court clerk to seal the record of the convictions.

24 (4) The circuit court clerk shall enter into an electronic
25 database provided by the Administrative Office of the Courts that the
26 convictions have been sealed.

27 (d)(1) The office shall transmit to the Arkansas Crime Information
28 Center a record of any conviction eligible under this section for automatic
29 sealing from a relevant state agency database or other publically operated or
30 administered repository the office receives from the circuit court clerks.

31 (2) If the record transmitted from the office to the center
32 cannot be validated and sealed automatically, the center shall contact the
33 circuit court clerk concerning the specific conviction for additional
34 information that can be used in the center's validation process.

35 (3) If the information transmitted to the center by the office
36 is validated, the center shall then seal the record from the center's own

1 database or other repository and transmit that validation to other relevant
2 state agency databases or other publically operated or administered
3 repositories that the center knows to contain that information.

4 (e) A record sealed from a relevant state agency database or other
5 publically operated or administered repository under this section may still
6 be released to those entities listed under § 16-90-1416.

7 (f) A court with jurisdiction may order a record previously sealed
8 from a relevant state agency database or other publically operated or
9 administered repository under this section unsealed upon a petition filed by
10 a prosecuting attorney that the record was sealed erroneously or not under
11 the requirements of this section.

12 (g) A record for a conviction before January 1, 2000, is not required
13 to be sealed from a relevant state agency database or other publically
14 operated or administered repository under this section.

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16 SECTION 4. DO NOT CODIFY. Record review.

17 The Administrative Office of the Courts and the Arkansas Crime
18 Information Center shall begin within one hundred eighty (180) days after
19 this act becomes effective a review of all eligible offenses for automatic
20 sealing under this act, beginning with those convictions that occurred in the
21 years 2000-2010, and shall begin the process of automatic sealing from
22 relevant state agency databases or other publically operated or administered
23 repositories, which shall be completed no later than December 31, 2020.

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25 /s/Boyd

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28 Referred requested by the Arkansas House of Representatives

29 Prepared by: BPG/VJF

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