

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representative Luker  
5 By: Senator Dowd  
6

# A Bill

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

12  
13 "AN ACT TO DEFINE EXPUNGEMENT AND  
14 ESTABLISH THE PROCEDURE FOR THE SEALING  
15 OF CRIMINAL RECORDS; TO AMEND CURRENT  
16 PROVISIONS OF ARKANSAS LAW INVOLVING  
17 EXPUNGEMENT."  
18

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  
34 to or is found guilty of possession of a controlled substance under §  
35 5-64-401, with the exception of a conviction for possession of a substance

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15 second or subsequent conviction under § 5-64-410 [repealed].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

20

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

22 "(b) The procedure, effect, and definition of \_expungement\_ for the  
23 purpose of this section shall be in accordance with that established in §§  
24 16-90-901 - 905."

25

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

27 "§ 16-90-603. Minor nonviolent felony offenders - Court order.

28 The procedure, effect, and definition of \_expungement\_ as used in

29 § 16-90-602 shall be in accordance with that established in §§ 16-90-901 -  
30 905."

31

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

33

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

35 "§ 16-90-605. Governor's pardon - Court order - Exclusions.

1 (a) Upon issuing a pardon, the Governor shall notify the sentencing  
2 court, and the court shall issue an order expunging the records relating to  
3 the conviction of the person pardoned.

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

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

11 (d) The procedure, effect, and definition of expungement for the  
12 purposes of this section shall be in accordance with that established in §§  
13 16-90-901 - 905."

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

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

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

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

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

34 § 16-90-903. Release of sealed records. (a) The custodian of the  
35 record shall not disclose the existence of such records or release such

1 records except when requested by:

2           (1) the individual whose records were sealed or the individual\_s  
3 attorney authorized in writing by the individual;

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

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

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

13           (5) the Arkansas Crime Information Center.

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

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

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

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

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

1 Information Center.

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

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

17 § 16-90-905. Uniform petition and order to seal records.

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

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

35 (b) If no record exists in the state central repository of the arrest

1 for the charge(s) in the petition, such record shall be established before  
2 the uniform order to seal becomes effective. When no record exists in the  
3 state central repository, it shall be the duty of the petitioner and the  
4 original arresting agency to submit fingerprint cards on the petitioner,  
5 according to § 12-12-1006, and procedures established by the Arkansas  
6 Crime Information Center."

7

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

9 "§ 16-93-301. Definition.

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

13

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

15 "(b) Upon fulfillment of the terms and conditions of probation or upon  
16 release by the court prior to the termination period thereof, the defendant  
17 shall be discharged without court adjudication of guilt, whereupon the court  
18 shall enter an appropriate order which shall effectively dismiss the case,  
19 discharge the defendant, and expunge the record, if consistent with the  
20 procedures established in §§ 16-90-901 - 16-90-905."

21

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

24 "(3) The procedure, effect, and definition of expungement for the  
25 purposes of this subsection shall be in accordance with that established in  
26 §§ 16-90-901 - 905."

27

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

31

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

1 act are declared to be severable.

2

3 SECTION 13. All laws and parts of laws in conflict with this act are  
4 hereby repealed.

5

*/s/Rep. Luker*

6