

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.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/14/07

A Bill

HOUSE BILL 2296

5 By: Representatives Pate, E. Brown, Thyer, Walters
6 By: Senator R. Thompson
7
8

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

Subtitle

15 TO CLARIFY THE APPLICABILITY OF VARIOUS
16 PROVISIONS OF THE ARKANSAS CODE
17 REGARDING EXPUNGEMENT AND SEALING OF
18 RECORDS OF CRIMINAL CONVICTIONS.
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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 in which a plea of guilty or nolo contendere has been entered or in which a
29 defendant was found guilty at trial is governed by the following provisions
30 of law:

31 (1) If no judgment of guilt is entered as a consequence of a
32 plea of guilty or nolo contendere, eligibility for an expungement or a
33 sealing of the records of the criminal prosecution is governed by § 5-4-311,
34 § 5-64-413, or §§ 16-93-301 – 16-93-303; and

35 (2) If a judgment of guilt is entered as a consequence of a plea
36 of guilty or nolo contendere or after a finding of guilt by a judge or a



1 jury, eligibility for an expungement or a sealing of the records of the
2 criminal prosecution is governed by § 16-93-1201 et seq.

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

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

8
9 SECTION 2. Arkansas Code § 16-93-303 is amended to read as follows:
10 16-93-303. Procedure.

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

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

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

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

31 (3) Nothing in this subsection shall require or compel any court
32 of this state to establish first offender procedures as provided in §§ 16-93-
33 301 - 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-
34 301 - 16-93-303 as a matter of right.

35 (b) Upon fulfillment of the terms and conditions of probation or upon
36 release by the court prior to the termination period thereof, the defendant

1 shall be discharged without court adjudication of guilt, whereupon the court
2 shall enter an appropriate order which shall effectively dismiss the case,
3 discharge the defendant, and expunge the record, if consistent with the
4 procedures established in § 16-90-901 et seq.

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

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

10 (2) A determination of habitual offender status;

11 (3) A determination of criminal history;

12 (4) A determination of criminal history scores;

13 (5) Sentencing; and

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

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

19 (1) A determination of habitual offender status;

20 (2) A determination of criminal history;

21 (3) A determination of criminal history scores;

22 (4) Sentencing; and

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

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

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

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

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

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

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

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

22
23 SECTION 4. Arkansas Code § 16-93-1207 is amended to read as follows:
24 16-93-1207. Order of court.

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

29 (1) That the offender is being:

30 (A) Committed to the Department of Correction;

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

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

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

36 (E) Committed to a county jail for a misdemeanor offense

1 committed after January 1, 2007;

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

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

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

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

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

22 (A) A capital offense;

23 (B) Murder in the first degree, § 5-10-102;

24 (C) Murder in the second degree, § 5-10-103;

25 (D) First degree rape, § 5-14-103;

26 (E) Kidnapping, § 5-11-102;

27 (F) Aggravated robbery, § 5-12-103; or

28 (G) Delivering controlled substances to a minor as
29 prohibited in § ~~5-64-701(a)(2) [repealed]~~ 5-64-410.

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

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

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/s/ Pate, et al

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