

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 S3/22/07

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





1 discharge the defendant, and expunge the record, if consistent with the  
2 procedures established in § 16-90-901 et seq.

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

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

8 (2) A determination of habitual offender status;

9 (3) A determination of criminal history;

10 (4) A determination of criminal history scores;

11 (5) Sentencing; and

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

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

17 (1) A determination of habitual offender status;

18 (2) A determination of criminal history;

19 (3) A determination of criminal history scores;

20 (4) Sentencing; and

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

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

26  
27 *SECTION 3.* Arkansas Code § 16-93-1202(10), concerning the definition  
28 of target group, is amended to read as follows:

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

1 Class B controlled substance felonies, and all other unclassified felonies  
 2 for which the prescribed limitations on a sentence do not exceed the  
 3 prescribed limitations for a Class C felony and that are not either violent  
 4 or sexual.

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

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

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

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

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

27 (1) That the offender is being:

28 (A) Committed to the Department of Correction;

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

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

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

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

36 (2) That the offender has knowledge and understanding of the

1 consequences of the sentence or placement on probation and violations  
2 thereof;

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

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

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

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

20 (A) A capital offense;  
21 (B) Murder in the first degree, § 5-10-102;  
22 (C) Murder in the second degree, § 5-10-103;  
23 (D) First degree rape, § 5-14-103;  
24 (E) Kidnapping, § 5-11-102;  
25 (F) Aggravated robbery, § 5-12-103; or  
26 (G) Delivering controlled substances to a minor as  
27 prohibited in § ~~5-64-701(a)(2) [repealed]~~ 5-64-410.

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

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

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*/s/ Pate*