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	As Engrossed: H3/14/07 S3/22/07	
2	86th General Assembly	A Bill	
3	Regular Session, 2007		HOUSE BILL 2296
4			
5	By: Representatives Pate, E. Brown, Thyer, Walters		
6	By: Senator R. Thompson		
7			
8			
9	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	CONVICTI	ONS; AND FOR OTHER PURPOSES.	
14			
15		Subtitle	
16	TO CL	LARIFY THE APPLICABILITY OF VARI	IOUS
17	PROVISIONS OF THE ARKANSAS CODE		
18	REGARDING EXPUNGEMENT AND SEALING OF		
19	RECOR	RDS OF CRIMINAL CONVICTIONS.	
20			
21			
22	BE IT ENACTED BY THE G	ENERAL ASSEMBLY OF THE STATE OF	ARKANSAS:
23			
24	SECTION 1. Arka	nsas Code Title 5, Chapter 4, S	Subchapter l is amended
25	to add an additional s	ection to read as follows:	
26	5-4-105. Expung	ement and sealing options.	
27	(a) An expungement	ent or sealing of the records o	of a criminal prosecution
28	is governed by the fol	lowing provisions of law:	
29	(1) If no	judgment of guilt is entered a	is 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	<u>(2) If a</u>	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 i	s governed by § 16-93-1201 et s	seq.

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- 1 (b) Eligibility for an expungement or a sealing of the records of a
 2 criminal prosecution that was terminated by an acquittal, dismissal, or nolle
 3 prosequi is governed by § 16-90-906.
 - (c) The procedure for an expungement or a sealing of the records of a criminal prosecution is governed by § 16-90-901 et seq.

- SECTION 2. Arkansas Code § 16-93-303 is amended to read as follows: 16-93-303. Procedure.
- (a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit or district court, in the case of a defendant who has not been previously convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court.
- (ii) A sentence of a fine not exceeding three thousand five hundred dollars (\$3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c), (d), and (e) of this section.
- (B) However, no person who is found guilty of or pleads guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim was under eighteen (18) years of age shall be eligible for expungement of the record under this subchapter.
- (2) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.
- 29 (3) Nothing in this subsection shall require or compel any court of this state to establish first offender procedures as provided in $\S\S$ 16-93-31 301 16-93-303, nor shall any defendant be availed the benefit of $\S\S$ 16-93-32 301 16-93-303 as a matter of right.
 - (b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order which shall effectively dismiss the case,

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	<pre>conviction except for:</pre>		
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 \S 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		

36

(2)

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., \S 5-13-301 et seq., and \S 5-14-101 et seq., and any offense 12 containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical harm, or 13 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 to register as a sex offender or a misdemeanor conviction for driving while 18 19 intoxicated. 20 SECTION 4. Arkansas Code § 16-93-1207 is amended to read as follows: 21 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;

That the offender has knowledge and understanding of the

1 consequences of the sentence or placement on probation and violations 2 thereof: (3) A designation of sentence or supervision length along with 3 4 community correction program distinctions of that sentence or supervision 5 length; 6 (4) Any applicable terms and conditions of the sentence or probation term; and 7 8 (5) Presentence investigation or sentencing information, 9 including, but not limited to, criminal history elements and other appropriate or necessary information for correctional use. 10 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 offenses targeted by the General Assembly for community correction placement, 14 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 felony conviction and that the previous felony was other than a conviction 18 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 $\frac{5-64-701(a)(2)}{(repealed)}$ 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 $\S 16-90-901$ et seq. 34 35 /s/ Pate 36