

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/13/09
A Bill

HOUSE BILL 1849

5 By: Representative Nickels
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8 **For An Act To Be Entitled**

9 AN ACT TO PREVENT EXPUNGEMENT OF A SECOND OR
10 SUBSEQUENT OFFENSE OF DOMESTIC BATTERY; AND FOR
11 OTHER PURPOSES.
12

13 **Subtitle**

14 TO PREVENT EXPUNGEMENT OF A SECOND OR
15 SUBSEQUENT OFFENSE OF DOMESTIC BATTERY.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 5-4-311 is amended to read as follows:

21 5-4-311. Discharge and dismissal.

22 (a) If a judgment of conviction was not entered by the court at the
23 time of suspension or probation and the defendant fully complies with the
24 conditions of suspension or probation for the period of suspension or
25 probation, the court shall discharge the defendant and dismiss any
26 proceedings against him or her.

27 (b)(1) Subject to ~~the provisions of~~ §§ 5-4-501 – 5-4-504, a person
28 against whom proceedings are discharged or dismissed under subsection (a) of
29 this section may seek to have the criminal record sealed, consistent with the
30 procedures established in § 16-90-901 et seq.

31 (2) This subsection does not apply if the person applying for
32 discharge under this section has been convicted of a:

33 (A) ~~The person applying for discharge has been convicted~~
34 ~~of a sexual~~ Sexual offense as defined by in § 5-14-101 et seq. and the victim
35 of the sexual offense was under eighteen (18) years of age; and or

36 (B) ~~The victim was under eighteen (18) years of age~~ Second



1 or subsequent offense of:-

2 (i) Domestic battering in the first degree, § 5-26-
3 303;

4 (ii) Domestic battering in the second degree, § 5-
5 26-304; or

6 (iii) Domestic battering in the third degree, § 5-
7 26-305.

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9 SECTION 2. Arkansas Code § 16-90-901 is amended to read as follows:

10 16-90-901. Definition.

11 (a)(1) As used in §§ 5-64-407, 5-4-311, 16-90-601, 16-90-602, 16-90-
12 605, 16-93-301 – 16-93-303, and 16-93-1207, “expunge” ~~shall mean~~ means that
13 the record or records in question shall be sealed, sequestered, and treated
14 as confidential in accordance with the procedures established by this
15 subchapter.

16 (2) Unless otherwise provided by this subchapter, “expunge”
17 shall not mean the physical destruction of any records.

18 (3) ~~No~~ A person who is found guilty of or pleads guilty or nolo
19 contendere to a sexual offense as defined in this section and in which the
20 *victim was under the age of eighteen (18) years shall not be eligible to have*
21 *the offense expunged under the procedures set forth in this subchapter.*

22 (4) A person who is found guilty of or pleads guilty or nolo
23 contendere to a second or subsequent offense of domestic battering under § 5-
24 26-303, § 5-26-304, or § 5-26-305 is not eligible to have the offense
25 expunged under the procedures set forth in this subchapter.

26 (b) For purposes of this subchapter, “sexual offense” shall be defined
27 as conduct prohibited by § 5-14-101 et seq., §§ 5-26-202, 5-27-602, 5-27-603,
28 5-27-605, 16-93-303(a)(1)(B), and any other subsequently enacted criminal law
29 prohibiting sexual conduct with a child.

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31 SECTION 3. Arkansas Code § 16-93-1207(b), concerning expungement of
32 criminal records after completion of probation or upon release from custody,
33 is amended to read as follows:

34 (b)(1) Upon the successful completion of probation or a commitment to
35 the Department of Correction with judicial transfer to the Department of
36 Community Correction or a commitment to a county jail for one (1) of the

1 offenses targeted by the General Assembly for community correction placement,
2 the court may direct that the record of the offender be expunged of the
3 offense of which the offender was either convicted or placed on probation
4 under the condition that the offender has no more than one (1) previous
5 felony conviction and that the previous felony was other than a conviction
6 for:

- 7 (A) A capital offense;
- 8 (B) Murder in the first degree, § 5-10-102;
- 9 (C) Murder in the second degree, § 5-10-103;
- 10 (D) First degree rape, § 5-14-103;
- 11 (E) Kidnapping, § 5-11-102;
- 12 (F) Aggravated robbery, § 5-12-103; ~~or~~
- 13 (G) Delivering controlled substances to a minor as
14 prohibited in § 5-64-410~~r~~; or
- 15 (H) A second or subsequent conviction of domestic
16 battering, § 5-26-303, § 5-26-304, or § 5-26-305.

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

20 (3) The procedure, effect, and definition of “expungement” for
21 the purposes of this subsection shall be in accordance with that established
22 in § 16-90-901 et seq.

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24 /s/ Nickels
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