

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1608

5 By: Representatives Nickels, Powers, Vines, H. Wilkins, Williams
6

For An Act To Be Entitled

8 AN ACT REGARDING THE EXPUNGEMENT OF MISDEMEANOR
9 CONVICTIONS; AND FOR OTHER PURPOSES.
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Subtitle

11 REGARDING THE EXPUNGEMENT OF MISDEMEANOR
12 CONVICTIONS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 5-4-105 is repealed:

20 ~~5-4-105. Expungement and sealing options.~~

21 ~~(a) An expungement or sealing of the records of a criminal prosecution~~
22 ~~is governed by the following provisions of law:~~

23 ~~(1) If no judgment of guilt is entered as a consequence of a~~
24 ~~plea of guilty or nolo contendere, eligibility for an expungement or a~~
25 ~~sealing of the records of the criminal prosecution is governed by § 5-4-311,~~
26 ~~§ 5-64-413, or §§ 16-93-301—16-93-303; and~~

27 ~~(2) If a judgment of guilt is entered as a consequence of a plea~~
28 ~~of guilty or nolo contendere or after a finding of guilt by a judge or a~~
29 ~~jury, eligibility for an expungement or a sealing of the records of the~~
30 ~~criminal prosecution is governed by § 16-93-1201 et seq.~~

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

34 ~~(c) The procedure for an expungement or a sealing of the records of a~~
35 ~~criminal prosecution is governed by § 16-90-901 et seq.~~
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1 SECTION 2. Arkansas Code § 5-64-413 is amended to read as follows:

2 5-64-413. Probation – Discharge and dismissal.

3 (a) When any person who has not previously pleaded guilty or been
4 found guilty of any offense under this chapter or under any statute of the
5 United States or of any state relating to a ~~narcotic drug, marijuana,~~
6 ~~stimulant, depressant, or a hallucinogenic drug~~ controlled substance pleads
7 guilty to or is found guilty of possession of a controlled substance under §
8 5-64-401, with the exception of a conviction for possession of a controlled
9 substance listed under Schedule I, the court without entering a judgment of
10 guilt and with the consent of the defendant ~~may~~ shall defer further
11 proceedings and place the defendant on probation for a period of not less
12 than one (1) year under such terms and conditions as may be set by the court.

13 (b) The court may require as a condition for probation that the
14 defendant undergo an evaluative examination by a physician or medical
15 facility approved by the court and, if warranted, undergo in-patient or out-
16 patient treatment and rehabilitation for drug abuse.

17 (c) Upon violation of a term or condition, the court may enter an
18 adjudication of guilt and proceed as otherwise provided.

19 (d)(1) Upon fulfillment of the terms and conditions, the court shall
20 discharge the person and dismiss the proceedings against him or her.

21 (2) Discharge and dismissal under this section shall be without
22 adjudication of guilt and is not a conviction for purposes of this section or
23 for purposes of disqualifications or disabilities imposed by law upon
24 conviction of a crime, including the additional penalties imposed for a
25 second or subsequent conviction under § 5-64-408.

26 (3) There may be only one (1) discharge and dismissal under this
27 section with respect to any person.

28 (4)(A) A person against whom proceedings are discharged or
29 dismissed may seek to have the criminal records sealed, consistent with the
30 procedures established in § 16-90-901 et seq.

31 (B) A person who has been placed on probation under this
32 section for a misdemeanor offense shall have his or her record expunged under
33 the procedures established in § 16-90-901 et seq.

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35 SECTION 3. Arkansas Code § 16-90-904(a), regarding the procedure for
36 sealing a person's criminal record, is amended to read as follows:

1 (a)(1) ~~Any~~ An individual who is eligible to have an offense expunged
2 may file a uniform petition to seal records, as described in § 16-90-905,
3 ~~with the circuit court in the circuit or district court in the county where~~
4 ~~the crime was committed and in which the person was convicted for the offense~~
5 ~~he or she is now petitioning to have expunged in the county where the crime~~
6 ~~was committed.~~

7 (2)(A) Unless the court is presented with and finds that there
8 is clear and convincing evidence that a misdemeanor conviction should not be
9 expunged under this subchapter, the court shall expunge all misdemeanor
10 convictions for a person after the person files a petition as described in
11 this section, except for the following offenses:

12 (i) Negligent homicide, § 5-10-105, if it was a
13 Class A misdemeanor;

14 (ii) Battery in the third degree, § 5-13-203;

15 (iii) Indecent exposure, § 5-14-112;

16 (iv) Public sexual indecency, § 5-14-111;

17 (v) Sexual assault in the fourth degree, § 5-14-127;

18 (vi) Domestic battering in the third degree, 5-26-
19 305; or

20 (vii) Driving while intoxicated, § 5-65-103.

21 (B)(i) The offenses listed in subdivision (a)(2)(A) of
22 this section may be expunged after a period of five (5) years has elapsed
23 since the completion of his or her sentence for those convictions; and

24 (ii) Shall be expunged after the period of time
25 required in subdivision (a)(2)(B)(i) of this section unless the court is
26 presented with and finds that there is clear and convincing evidence that the
27 misdemeanor conviction should not be expunged under this subchapter.