

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 120

By: Senator D. Johnson
By: Representative Vines

For An Act To Be Entitled

AN ACT MAKING TECHNICAL CORRECTIONS TO TITLE 16 OF
THE ARKANSAS CODE; AND FOR OTHER PURPOSES.

Subtitle

MAKING TECHNICAL CORRECTIONS TO TITLE 16
OF THE ARKANSAS CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-10-404(b)(1)(G) and (H), concerning the duties and records of the Judicial Discipline and Disability Commission, is amended to read as follows to conform to style and clarify:

(G)~~(i)~~ If, during the course of or after an investigation or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of any rules of professional conduct of attorneys at law, the Judicial Discipline and Disability Commission may release such information to any committee, commission, agency, or body within or outside of the state empowered to investigate, regulate, or adjudicate matters incident to the legal profession~~;~~

~~(i)~~ (H) If, during the course of or after an investigation or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of a law or rule falling under the jurisdiction of the Arkansas Ethics Commission, the Judicial Discipline and Disability Commission may release such information to the Arkansas Ethics Commission; or

~~(H)~~ (I) If, during the course of or after an investigation



or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of criminal law, the Judicial Discipline and Disability Commission shall release such information to the appropriate prosecuting attorney.

SECTION 2. Arkansas Code § 16-10-1103(b)(2)(F), concerning court interpreters for persons with limited English proficiency, is amended to read as follows to make a reference consistent:

(F) Ensuring reciprocity of certification for interpreters from other jurisdictions provided that the criteria for certification in the ~~foreign~~ other jurisdiction is comparable to that established by the office;

SECTION 3. Arkansas Code § 16-17-802, concerning combining multiple misdemeanor court convictions on appeal, is amended to read as follows to correct a grammatical error and conform usage:

16-17-802. Combining multiple misdemeanor court convictions.

If a person who has been convicted of more than one (1) related misdemeanor offense in district court or city court shall present otherwise lawfully sufficient documents to the circuit clerk for an appeal of the related convictions, accompanied by an affidavit of the person or his or her attorney stating that the convictions arise out of the same set of facts and circumstances, the circuit clerk shall:

- (1) Combine the convictions; ~~and~~
- (2) ~~(A)~~ Prepare and file the appeal as one (1) case; and
- ~~(B)~~ (3) Charge only one (1) filing fee for the appeal.

SECTION 4. Arkansas Code § 16-20-301, concerning preservation of seal and property of office of the circuit court clerks, is amended to read as follows to clarify references:

16-20-301. Preservation of seal and property of office.

(a) Each circuit clerk shall preserve the seal and other property belonging to his or her office and shall provide suitable books, stationery, furniture, and other things necessary for his or her office.

(b) ~~The A circuit clerk's~~ A circuit clerk's seal shall be clear and legible and capable of photographic reproduction.

SECTION 5. Arkansas Code § 16-23-102(c)(3)(A), concerning county law library boards, is amended to read as follows to clarify references:

(3)(A) The board may dispose of any personal property of the county law library it determines is junk, scrap, discarded, or otherwise of no value to the county law library.

SECTION 6. Arkansas Code § 16-47-107(c), concerning forms for acknowledgement, is amended to read as follows to add gender neutral language to a form:

(c) For all deeds, conveyances, deeds of trust, mortgages, and other instruments in writing affecting or purporting to affect the title of any real estate situated in this state and executed by attorneys in fact, the following form is deemed to be a valid acknowledgment and sufficient for recordation or entry into evidence under § 18-12-202:

“State of.....
County of.....
On this the day of, 20....., before me,
....., the undersigned officer, personally appeared,
known to me (or satisfactorily proven) to be the person whose name is
subscribed as attorney in fact for, and acknowledged that [he
or she] executed the same as the act of [his or her] principal for the
consideration, uses, and purposes therein contained.

IN TESTIMONY WHEREOF I hereunto set my hand and official seal.

.....
.....

Title of Officer.”

SECTION 7. Arkansas Code § 16-86-103(a), concerning examination and observation of the insanity defense, is amended to read as follows to correct grammatical errors:

(a) If the court orders the defendant to undergo examination and observation, the examination and observation of the defendant shall be made by:

(1) A licensed psychiatrist who:

(A) Has successfully completed or is currently participating in+

~~(i)~~—A a post-residency fellowship in forensic psychiatry accredited by the American Board of Psychiatry and Neurology, Inc.† or

~~(ii)~~—~~Has~~ has successfully completed a forensic certification course approved by the Department of Human Services; and

(B) Is currently approved by the Department of Human Services to administer forensic examinations; or

(2) A licensed psychologist who ~~has~~:

(A) ~~Successfully~~ Has successfully completed or is currently participating in a formal postdoctoral fellowship training program in forensic psychology or has successfully completed a forensic certification course approved by the Department of Human Services; and

(B) Is currently approved by the Department of Human Services to administer forensic examinations.

SECTION 8. Arkansas Code § 16-87-203(d), concerning the Public Defender Fund, is repealed because it is obsolete.

~~(d) There is hereby created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the “Public Defender Fund” to be used exclusively by the commission, as appropriated by the General Assembly.~~

SECTION 9. Arkansas Code § 16-87-214(b), concerning prohibited conduct of a public defender, is amended to read as follows to clarify a reference and make stylistic changes:

(b) ~~Nothing in this section shall be construed to~~ This section does not bar a prosecution or other disciplinary action against a trial public defender or deputy trial public defender who commits a violation of the law or the ~~Supreme Court Model~~ Arkansas Rules of Professional Conduct.

SECTION 10. Arkansas Code § 16-90-123, concerning sealing certain criminal convictions, is repealed to move this provision to a new subchapter concerning the Comprehensive Criminal Record Sealing Act of 2013.

~~16-90-123. Sealing certain convictions.~~

~~(a) As used in this section, "victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103, or any former law of this state, law of another state, or federal law that is substantially similar.~~

~~(b)(1) A person convicted of prostitution, § 5-70-102, may file a petition to seal the conviction under this section if it was obtained as a result of the person having been a victim of human trafficking.~~

~~(2) A petition under this section may be filed at any time and may be filed for a conviction imposed before, on, or after August 16, 2013.~~

~~(3)(A) The court shall hold a hearing on the petition under this section as provided in § 16-90-904 [repealed effective January 1, 2014].~~

~~(B) The court may dismiss the petition without a hearing if the court finds that the petition fails to assert a claim for which relief may be granted.~~

~~(4) The court shall grant the petition under this section if it finds by a preponderance of the evidence that:~~

~~(A) The petitioner was convicted of prostitution, § 5-70-102; and~~

~~(B) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.~~

~~(5) If the petition under this section is granted, the court shall:~~

~~(A) Issue an order to seal the conviction; and~~

~~(B) With respect to the conviction for prostitution, § 5-70-102, redact the petitioner's name from all records and files related to the petitioner's:~~

~~(i) Arrest;~~

~~(ii) Citation;~~

~~(iii) Criminal investigation;~~

~~(iv) Criminal charge;~~

~~(v) Adjudication of guilt;~~

~~(vi) Criminal proceedings; and~~

~~(vii) Probation for the offense.~~

~~(6)(A) Official documentation by a federal, state, or local government agency verifying that at the time of the conviction for~~

~~prostitution, § 5-70-102, the petitioner was a victim of human trafficking creates a presumption under this section that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking.~~

~~(B) Documentation under this subdivision (b)(6) is not required to grant a petition under this section.~~

~~(C) Documentation under this subdivision (b)(6) may include without limitation:~~

~~(i) Certified records of federal or state court proceedings that demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under state law or the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et seq., as it existed on January 1, 2013; or~~

~~(ii) Certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to victims of human trafficking.~~

SECTION 11. Arkansas Code § 16-90-907, concerning eligibility to file a uniform petition to seal a misdemeanor offense or violation, is repealed to remove the obsolete language, which is superseded by the Comprehensive Criminal Record Sealing Act of 2013.

~~16-90-907. Eligibility to file a uniform petition to seal a misdemeanor offense or violation.~~

~~(a) A person is eligible to file a uniform petition under this subchapter to seal his or her record of a misdemeanor or violation sixty (60) days after:~~

~~(1) The completion of his or her sentence for the misdemeanor or violation, including full payment of restitution;~~

~~(2) Full payment of court costs; and~~

~~(3) Full payment of driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest or conviction for the misdemeanor or violation.~~

~~(b) There is not a limit to the number of times a person may file a uniform petition to seal his or her record of a misdemeanor or violation, except that the person may not file:~~

~~(1) A new uniform petition to seal a criminal offense listed in~~

~~§ 16-90-904(a)(2)(A) [repealed effective January 1, 2014] until after a period of five (5) years has elapsed since the completion of the person's sentence for the conviction;~~

~~(2) A new uniform petition to seal a criminal offense listed in § 16-90-904(a)(2)(A) [repealed effective January 1, 2014] before one (1) year from the date of the order denying the previous uniform petition;~~

~~(3) A new uniform petition to seal any other misdemeanor or violation before ninety (90) days from the date of an order denying a uniform petition to seal the misdemeanor or violation;~~

~~(4) A new uniform petition to seal a misdemeanor or violation under this section if an appeal of a previous denial of a uniform petition to seal a misdemeanor or violation for the same misdemeanor or violation is still pending; or~~

~~(5) A new uniform petition to seal a misdemeanor or violation under this section if:~~

~~(A) The person was a holder of a commercial driver license or commercial learner's permit at the time the misdemeanor or violation was committed; and~~

~~(B) The misdemeanor or violation was a traffic offense, other than a parking violation, vehicle weight violation, or vehicle defect violation, committed in any type of motor vehicle.~~

~~(c) Except as provided in subsection (b) of this section, a person is eligible to file a uniform petition to seal a misdemeanor or violation under this section even if his or her misdemeanor or violation occurred before January 1, 2014.~~

SECTION 12. Arkansas Code Title 16, Chapter 90, Subchapter 14, concerning the Comprehensive Criminal Record Sealing Act of 2013, is amended to add an additional section to read as follows to add a new section containing language being repealed at Arkansas Code § 16-90-123:

16-90-1412. Sealing certain convictions for victims of human trafficking.

(a) As used in this section, "victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103, or any former law of this state, law of another state, or federal law that is substantially similar.

(b)(1) A person convicted of prostitution, § 5-70-102, may file a uniform petition to seal the conviction under this section if it was obtained as a result of the person's having been a victim of human trafficking.

(2) A uniform petition under this section may be filed at any time and may be filed for a conviction imposed at any time.

(c) The court shall grant the uniform petition under this section if it finds by a preponderance of the evidence that:

(1) The petitioner was convicted of prostitution, § 5-70-102;
and

(2) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.

(d) If the uniform petition under this section is granted, the court shall:

(1) Issue a uniform order to seal the conviction; and

(2) With respect to the conviction for prostitution, § 5-70-102, redact the petitioner's name from all records and files related to the petitioner's:

(A) Arrest;

(B) Citation;

(C) Criminal investigation;

(D) Criminal charge;

(E) Adjudication of guilt;

(F) Criminal proceedings; and

(G) Probation for the offense.

(e)(1) Official documentation by a federal, state, or local government agency verifying that at the time of the conviction for prostitution, § 5-70-102, the petitioner was a victim of human trafficking creates a presumption under this section that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking.

(2) Documentation under this subsection is not required to grant a petition under this section.

(3) Documentation under this subsection may include without limitation:

(A) Certified records of federal or state court proceedings that demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under state law or the Victims of

Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et seq., as it existed on January 1, 2013; or

(B) Certified records of “approval notices” or “law enforcement certifications” generated from federal immigration proceedings available to victims of human trafficking.

SECTION 13. Arkansas Code § 16-90-1413(c)(2) and (d)(1), concerning the procedure for sealing of records, is amended to read as follows to clarify its application:

(2) If the court determines that the record shall be sealed under the standards of § 16-90-1415, the uniform order described in § 16-90-1414 shall be entered and filed with the circuit court clerk or district court clerk, as applicable.

(d)(1) ~~The circuit~~ A court clerk with whom a uniform order is filed shall certify copies of the uniform order to the prosecuting attorney who filed the underlying charges, the arresting agency, the Arkansas Crime Information Center, and, if applicable, any district court where the person appeared before the transfer or appeal of the case to circuit court.

SECTION 14. The introductory language of Arkansas Code § 16-90-1413(e)(1), concerning the procedure for sealing of records, is amended to read as follows to clarify its application:

(e)(1) The circuit court clerk, the district court clerk, and, if applicable, the district court clerk where the person appeared before the transfer or appeal of the case to circuit court shall:

SECTION 15. Arkansas Code § 16-93-210(a)(1), concerning the monthly performance report on parole applications and outcome, is amended to read as follows to eliminate obsolete language:

(a)(1) ~~Beginning October 1, 2011, the~~ The Parole Board shall submit a monthly report to the chairs of the House Committee on Judiciary and the Senate Committee on ~~Judiciary~~ Judiciary, the Legislative Council, the Board of Corrections, and the Governor, ~~and the Commission on Disparity in Sentencing~~ showing the number of persons who make application for parole and those who are granted or denied parole during the previous month for each criminal offense classification.

SECTION 16. The introductory language of Arkansas Code § 16-93-615(b)(1)(A), concerning parole eligibility procedures for offenses committed after January 1, 1994, is amended to read as follows to correct a reference:

(A) Unless the offense is listed under § 16-93-612(e)(1), the following ~~homicide~~ offenses:

SECTION 17. Arkansas Code § 16-120-202(b)(1)(B), concerning immunity for tort liability for equine and livestock activities, is amended to read as follows to make references consistent with defined terms:

(B) The signs required under subdivision (b)(1)(A) of this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine activity sponsor or livestock activity sponsor conducts ~~equine or livestock activities~~ an equine activity or livestock activity.

SECTION 18. DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Ninetieth General Assembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.