

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

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: H3/11/19  
**A Bill**

HOUSE BILL 1540

By: Representatives Boyd, Richardson, L. Johnson, Crawford, D. Whitaker, B. Smith, *K. Ferguson*  
By: Senator M. Pitsch

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH A PROCESS BY WHICH RECORDS OF CERTAIN CRIMINAL OFFENSES ARE AUTOMATICALLY REMOVED AFTER A CERTAIN PERIOD OF TIME; CONCERNING THE RECORDS OF A PERSON'S CRIMINAL HISTORY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH A PROCESS BY WHICH RECORDS OF CERTAIN CRIMINAL OFFENSES ARE AUTOMATICALLY REMOVED AFTER A CERTAIN PERIOD OF TIME; AND CONCERNING THE RECORDS OF A PERSON'S CRIMINAL HISTORY.

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

*SECTION 1. DO NOT CODIFY. Legislative intent.*

*(a) It is the intent of the General Assembly to implement the automatic record sealing process under this act for all circuit courts in this 2019 Regular Session.*

*(b) It is further the intent of the General Assembly to study and address the mechanisms and technical requirements necessary to implement automatic record sealing for the state's district courts during the interim, with the express goal of implementing a similar system for the state's district courts in the 2021 Regular Session.*

*SECTION 2. Arkansas Code § 16-90-1404, concerning definitions used in*



conjunction with the Comprehensive Criminal Record Sealing Act of 2013, is amended to add additional subdivisions to read as follows:

(9) "Offense eligible for automatic sealing" means an offense for which a person was convicted in circuit court and is one (1) of the following offenses:

(A) A violation;

(B) A misdemeanor, except for the following misdemeanors:

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

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

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

(iv) Indecent exposure, § 5-14-112;

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

or

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

(C) A Class C felony or Class D felony that is not:

(i) A felony involving violence as defined in § 5-4-501(d)(2); or

(ii) An offense for which a person is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; and

(10)(A) "Relevant state agency database or other publicly operated or administered repository" means a publically operated or administered electronic database, computer file, compilation of physical documents, or other method of holding organized information that lists a person's criminal history information, criminal background, sentencing information, or information concerning a criminal offense adjudication that indicates that the person pleaded guilty or nolo contendere to, or was found guilty of, a criminal offense.

(B) "Relevant state agency database or other publicly operated or administered repository" includes physical court records in the possession of a circuit court clerk or district court clerk.

(C) "Relevant state agency database or other publicly operated or administered repository" does not include a database or repository operated or administered by:

(i) The Department of Arkansas State Police;  
(ii) The Department of Correction;  
(iii) The Department of Community Correction; or  
(iv) The Arkansas Commission on Law Enforcement  
Standards and Training.

SECTION 3. Arkansas Code Title 16, Chapter 90, Subchapter 14, is amended to add an additional section to read as follows:

16-90-1420. Automatic sealing of information concerning certain convictions after specified time period.

(a) A record of an offense eligible for automatic sealing shall be automatically sealed from a relevant state agency database or other publically operated or administered repository under procedures set out in this section if the following conditions apply:

(1) The person would otherwise be eligible to have all records of the offense sealed by a sentencing court under this subchapter;

(2) A period of five (5) years has elapsed from the date of the person's conviction for the offense and from the person's completion of a person's sentence; and

(3) The person has not been convicted of a felony or a Class A misdemeanor since the date of the person's conviction for the offense eligible for automatic sealing, even if that subsequent conviction was sealed.

(b) This section does not prohibit a person from having his or her record otherwise sealed under this subchapter.

(c)(1) On a monthly basis the circuit court clerk shall compile and provide a list of convictions in the circuit court for an offense eligible for automatic sealing in this section and transmit the list of convictions in the circuit court to the prosecuting attorney.

(2)(A) The prosecuting attorney shall verify that the convictions on the list of convictions in the circuit court are eligible for automatic sealing under this section and that the persons who were convicted have completed the terms and conditions of their sentences.

(B) The prosecuting attorney shall verify the information described in subdivision (c)(2)(A) of this section within thirty (30) days of the receipt of the list of convictions in the circuit court and transmit back

to the circuit court clerk a list of ineligible convictions based on whether a period of five (5) years has elapsed since the date of the person's conviction for a misdemeanor offense or whether the person has completed the terms and conditions of his or her sentence for a felony conviction.

(C) The prosecuting attorney may object to the automatic sealing of a conviction by filing a petition in the circuit court and providing notice to the circuit court clerk and to the person whose conviction is eligible for automatic sealing at the person's last known address.

(D) The circuit court may grant a hearing on the prosecuting attorney's objection or may decide the petition without a hearing.

(3)(A) Upon receiving the list of ineligible convictions back from the prosecuting attorney, the circuit court clerk shall remove those convictions from the list of eligible convictions he or she originally compiled and then transmit that revised list of eligible convictions to the circuit court.

(B) The circuit court shall enter an order within ten (10) days of receiving the list of eligible convictions from the circuit court clerk ordering the circuit court clerk to seal the record of the convictions.

(4) The circuit court clerk shall enter into an electronic database provided by the Administrative Office of the Courts that the convictions have been sealed.

(d)(1) The office shall transmit to the Arkansas Crime Information Center a record of any conviction eligible under this section for automatic sealing from a relevant state agency database or other publically operated or administered repository the office receives from the circuit court clerks.

(2) If the record transmitted from the office to the center cannot be validated and sealed automatically, the center shall contact the circuit court clerk concerning the specific conviction for additional information that can be used in the center's validation process.

(3) If the information transmitted to the center by the office is validated, the center shall then seal the record from the center's own database or other repository and transmit that validation to other relevant state agency databases or other publically operated or administered repositories that the center knows to contain that information.

(e) A record sealed from a relevant state agency database or other publically operated or administered repository under this section may still be released to those entities listed under § 16-90-1416.

(f) A court with jurisdiction may order a record previously sealed from a relevant state agency database or other publically operated or administered repository under this section unsealed upon a petition filed by a prosecuting attorney that the record was sealed erroneously or not under the requirements of this section.

(g) A record for a conviction before January 1, 2000, is not required to be sealed from a relevant state agency database or other publically operated or administered repository under this section.

SECTION 4. DO NOT CODIFY. Record review.

The Administrative Office of the Courts and the Arkansas Crime Information Center shall begin within one hundred eighty (180) days after this act becomes effective a review of all eligible offenses for automatic sealing under this act, beginning with those convictions that occurred in the years 2000-2010, and shall begin the process of automatic sealing from relevant state agency databases or other publically operated or administered repositories, which shall be completed no later than December 31, 2020.

/s/Boyd