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

State of Arkansas *As Engrossed: H1/27/21 H2/24/21*
93rd General Assembly
A Bill
Regular Session, 2021 HOUSE BILL 1256

By: Representatives Boyd, McCollum, C. Fite, Vaught, Lundstrum, Hawks, Crawford, *M. McElroy*
By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT TO AMEND THE COMPREHENSIVE CRIMINAL RECORD SEALING ACT OF 2013; TO PERMIT CERTAIN PERSONS WITH FELONY CONVICTIONS TO BE ELIGIBLE FOR CRIMINAL RECORD SEALING; CONCERNING THE TIMELINE DURING WHICH A PROSECUTING ATTORNEY MAY OBJECT TO A PETITION TO SEAL; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE COMPREHENSIVE CRIMINAL RECORD SEALING ACT OF 2013.

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

SECTION 1. Arkansas Code § 16-90-1406 is amended to read as follows:

16-90-1406. Felony convictions eligible for sealing.

(a) Unless prohibited under § 16-90-1408 and regardless of when the felony occurred, a person may petition a court to seal a record of a conviction immediately after the completion of the person's sentence for:

(1) A nonviolent Class C felony or nonviolent Class D felony;

(2) An unclassified felony;

(3) An offense under ~~§ 5-64-401 et seq.~~ the Uniform Controlled Substances Act, § 5-64-101 et seq., that is a Class A felony or Class B felony;

(4) Solicitation to commit, attempt to commit, or conspiracy to commit the substantive offenses listed in subdivisions (a)(1)-(3) of this section; or

(5) A felony not involving violence committed while the person was less than eighteen (18) years of age.

(b) Unless prohibited under § 16-90-1408, a person may petition a court with jurisdiction to seal a record of a conviction under this section after five (5) years have elapsed since the completion of the person's sentence for a violent Class C felony or a violent Class D felony.

(c)(1)(A) The petitioner can have no more than one (1) previous felony conviction.

(B) For the sole purpose of calculating the number of previous felony convictions under this section, all felony offenses that were committed as part of the same criminal episode and for which the person was convicted are a single conviction.

(2) The fact that a prior felony conviction has been previously sealed shall not prevent ~~its~~ the prior felony conviction's counting as a prior felony conviction for the purposes of this subsection.

SECTION 2. Arkansas Code § 16-90-1408 is amended to read as follows:

16-90-1408. Felony convictions ineligible for sealing.

(a) A record of a conviction of any of the following offenses is not eligible to be sealed under this subchapter:

(1) A Class Y felony, Class A felony, or Class B felony, except as provided in § 16-90-1406;

(2) Manslaughter, § 5-10-104;

(3) An unclassified felony if the maximum sentence of imprisonment for the unclassified felony is more than ten (10) years;

(4) A felony sex offense; or

(5) A felony involving violence under § 5-4-501(d)(2)~~; and~~

~~(6) A felony for which a person served any portion of his or her sentence as an inmate in the Division of Correction~~.

(b)(1) A felony traffic offense committed in any type of motor vehicle if the person was a holder of a commercial learner's permit or commercial driver license at the time the felony offense was committed is not eligible for sealing under this subchapter.

(2) As used in this subsection, "traffic offense" does not include a parking violation, vehicle weight violation, or vehicle defect violation.

SECTION 3. Arkansas Code § 16-90-1413(b) and (c), concerning the timeline during which the prosecuting attorney may object to a petition to seal, are amended to read as follows:

(b)(1)(A) A copy of the uniform petition shall be served upon the prosecuting attorney for the county in which the uniform petition is filed and upon the arresting agency, if the arresting agency is a named party, within three (3) days of the filing of the uniform petition.

(B) It is not necessary to make the arresting agency a party to the action.

(2)(A) The prosecuting attorney may file a notice of opposition with the court for a uniform petition seeking to seal a record of an eligible misdemeanor conviction or violation setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B)(i) If notice of opposition is not filed, the court may grant the uniform petition.

(ii) If notice of opposition is filed, the court shall set the matter for a hearing if the record for which the uniform petition was filed is eligible for sealing under this subchapter unless the prosecuting attorney consents to allow the court to decide the case solely on the pleadings.

(3)(A) The prosecuting attorney may file a notice of opposition with the court for a uniform petition seeking to seal a record of an eligible felony conviction setting forth reasons for the opposition to the sealing within thirty (30) days after receipt of the uniform petition or after the uniform petition is filed, whichever is the later date.

(B) ~~A court may not sign a uniform order sealing an eligible felony conviction without a hearing~~ If the prosecuting attorney files a notice of opposition with the court, the court may set the matter for a hearing.

(C) The court may grant the uniform petition only after the hearing described in subdivision (b)(3)(B) of this section has been conducted.

(c)(1) The court may ~~not grant the uniform petition until thirty (30) days have passed since the uniform petition was served on the prosecuting~~

~~*attorney, although the court may*~~ *grant or deny* ~~*the*~~ *a uniform petition at any time after the thirty-day period described in subdivision (b)(3)(A) of this section has expired.*

(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.

/s/Boyd