

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

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As Engrossed: S4/13/21 S4/21/21
A Bill

SENATE BILL 645

By: Senators G. Stubblefield, Caldwell, K. Ingram, M. Johnson, D. Sullivan
By: Representatives V. Flowers, Boyd, M. Gray, Milligan, Vaught

For An Act To Be Entitled

AN ACT TO ESTABLISH A PATH TO RESTORATION OF THE RIGHT TO POSSESS A FIREARM UNDER STATE LAW AFTER A CERTAIN TIME PERIOD HAS PASSED SINCE A PERSON CONVICTED OF CERTAIN FELONIES HAS COMPLETED HIS OR HER SENTENCE; TO PROVIDE FOR THE DISCHARGE, DISMISSAL, AND SEALING OF A FELONY CONVICTION; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH A PATH TO RESTORATION OF THE RIGHT TO POSSESS A FIREARM; AND TO PROVIDE FOR THE DISCHARGE, DISMISSAL, AND SEALING OF A FELONY CONVICTION.

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

SECTION 1. Arkansas Code § 5-73-103(a) and (b), concerning the offense of possession of a firearm by certain persons, are amended to read as follows:

(a) Except as provided in subsection (d) of this section or unless authorized by and subject to ~~such~~ conditions ~~as~~ prescribed by the Governor, or his or her designee, ~~or~~ the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other bureau or office designated by the United States Department of Justice, ~~no~~ a person shall not possess or own ~~any~~ a firearm ~~who~~ if he or she has been:

(1) Convicted of a felony;



(2) *Adjudicated mentally ill; or*

(3) *Committed involuntarily to ~~any~~ a mental institution.*

(b)(1) *Except as provided in subdivisions (b)(2) and (3) of this section, a determination by a jury or a court that a person committed a felony constitutes a conviction for purposes of subsection (a) of this section even though the court suspended imposition of sentence or placed the defendant on probation.*

(2) *Subdivision (b)(1) of this section does not apply to a person whose case was dismissed and expunged under § 16-93-301 et seq. or § 16-98-303(g).*

(3) *The determination by the jury or court that the person committed a felony does not constitute a conviction for purposes of subsection (a) of this section if the person is subsequently granted a pardon explicitly restoring the ability to possess a firearm or if the conviction is discharged, dismissed, and sealed under § 16-90-1501 et seq.*

SECTION 2. Arkansas Code § 5-73-309(5), concerning licensing requirements for a license to carry a concealed handgun, is amended to read as follows:

(5) *Has not been convicted of a felony in a court of this state, of any other state, or of the United States unless:*

(A) *The applicant is subsequently granted a pardon by the Governor or the President of the United States explicitly restoring his or her ability to possess a firearm;*

(B) *The applicant was sentenced prior to March 13, 1995, and the record of conviction has been sealed or expunged under Arkansas law;*
~~or~~

(C) *The applicant's offense was dismissed and sealed or expunged under § 16-93-301 et seq. or § 16-98-303(g); or*

(D) The applicant's offense was discharged, dismissed, and sealed under § 16-90-1501 et seq.;

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

Subchapter 15 – Firearm Right Restoration

16-90-1501. Scope.

(a) This subchapter concerns the discharge, dismissal, and sealing of a person's state felony conviction that prohibits the person from lawfully possessing a firearm under state law.

(b) This subchapter is separate and distinct from the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

16-90-1502. Definitions.

As used in this subchapter:

(1) "Completion of a person's sentence" means that the person, after being found guilty of a felony:

(A) Paid his or her fine, court costs, or other monetary obligation as defined in § 16-13-701 in full, unless the obligation has been excused by the sentencing court;

(B) Served any time in county or regional jail, a Division of Community Correction facility, or a Division of Correction facility in full; and

(C) If applicable:

(i) Has been discharged from probation or parole;

(ii) Completed any suspended sentence;

(iii) Paid any court-ordered restitution;

(iv) Completed any court-ordered community service;

(v) Paid any driver's license suspension reinstatement fees, if a driver's license suspension reinstatement fee was assessed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense;

(vi) Completed all other driver's license reinstatement requirements, if a driver's license suspension was imposed as a result of the person's arrest, plea of guilty or nolo contendere, or a finding of guilt for the offense; and

(vii) Completed any vocational or technical education or training program that was required as a condition of the person's parole or probation;

(2) "Conviction":

(A) Includes the following, after the final act of

judgment:

(i) A plea of guilty or nolo contendere, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a person formally charged with an offense;

(ii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, by a judge or jury after a trial;

(iii) A finding of guilt, unless entered pursuant to court-ordered probation described in subdivision (2)(B)(iv) of this section, after entry of a plea of nolo contendere;

(iv) A sentence of supervised probation on a felony charge;

(v) A suspended imposition of sentence, as defined in § 16-93-1202, with a fine;

(vi) A sentence under § 16-93-1201 et seq.;

(vii) A suspended sentence that is revocable and can subject the person to incarceration or a fine, or both; or

(viii) A finding of guilt of a person whose case proceeded under § 16-93-301 et seq. and who violated the terms and conditions of § 16-93-301 et seq.; and

(B) Does not include:

(i) An order nolle prosequi;

(ii) A suspended imposition of sentence, as defined in § 16-93-1202, with no fine;

(iii) An acquittal for any reason;

(iv) An order that the defendant enter a diversionary program that requires him or her to accomplish certain court-ordered objectives but that does not result in a finding of guilt if the program is successfully completed;

(v) A court-ordered probationary period under:

(a) The former § 5-64-413; or

(b) Section 16-93-301 et seq.;

(vi) The entry of a plea of guilty or nolo contendere without the court's making a finding of guilt or entering a judgment of guilt with the consent of the defendant or the resultant discharge, dismissal, and sealing of the defendant as prescribed by § 16-93-

301 et seq.;

(vii) The entry of a directed verdict by a court at trial; or

(viii) The dismissal of a charge either with or without prejudice;

(3) "Court" means a sentencing circuit court, unless otherwise specifically identified;

(4) "Discharge, dismissal, and sealing" means the sentencing circuit court retroactively discharges, dismisses, and seals a person's felony conviction, the effect of which is that the felony conviction is erased from the persons' criminal history to the extent that it never occurred;

(5) "Discharged, dismissed, and sealed" means a case has resulted in a successful discharge, dismissal, and sealing under this subchapter;

(6) "Sentence" means the outcome formally entered by a court upon a person in criminal proceedings;

(7) "Uniform order" means a uniform order to discharge, dismiss, and seal a conviction that prohibits the person from lawfully possessing a firearm under state law; and

(8) "Uniform petition" means a uniform petition to discharge, dismiss, and seal a conviction that prohibits the person from lawfully possessing a firearm under state law.

16-90-1503. Convictions prohibiting person from possessing firearm eligible for discharge, dismissal, and sealing.

(a) Unless prohibited under this section, a person may file a uniform petition under this subchapter ten (10) years or more after the completion of the person's sentence for any felony that is not listed below or contained in the following subchapters:

(1) Section 5-10-101 et seq.;

(2) Section 5-11-101 et seq.;

(3) Section 5-12-101 et seq.;

(4) Section 5-3-201 et seq.;

(5) Section 5-13-301 et seq.;

(6) Section 5-14-101 et seq.;

- (7) Section 5-16-101 et seq.;
(8) Section 5-17-101 et seq.;
(9) The Human Trafficking Act of 2013, § 5-18-101 et seq.;
(10) Section 5-26-301 et seq.;
(11) Section 5-26-501 et seq.;
(12) The Arkansas Protection of Children Against Exploitation Act of 1979, § 5-27-301 et seq.;
(13) Section 5-27-401 et seq.;
(14) Section 5-27-601 et seq.;
(15) Section 5-28-101 et seq.;
(16) Section 5-38-101 et seq.;
(17) Causing a catastrophe, § 5-38-202;
(18) Residential burglary, § 5-39-201;
(19) Aggravated residential burglary, § 5-39-204;
(20) First degree escape, § 5-54-110, second degree escape, § 5-54-111, third degree escape, § 5-54-112, and permitting escape in the first degree, § 5-54-113;
(21) Fleeing, § 5-54-125;
(22) Killing or injuring animals used by law enforcement or search and rescue dogs, § 5-54-126;
(23) Section 5-54-201 et seq.;
(24) Section 5-62-101 et seq.;
(25) Trafficking a controlled substance, § 5-64-440;
(26) Aggravated riot, § 5-71-202;
(27) Stalking, § 5-71-229;
(28) Section 5-73-101 et seq.;
(29) The Arkansas Criminal Gang, Organization, and Enterprise Act, § 5-74-101 et seq.;
(30) A felony that requires a person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; or
(31) A felony involving violence as defined in § 5-4-501(d)(2).
- (b)(1) A person may file only one (1) uniform petition during his or her life.
- (2) A person filing a uniform petition may petition to discharge, dismiss, and seal a felony and any related felonies that occurred

out of the same course of conduct or criminal episode but may not petition to discharge, dismiss, and seal multiple felonies that have no causal connection.

16-90-1504. Procedure.

(a)(1) A person who is eligible to have a conviction discharged, dismissed, and sealed and have his or her rights to lawfully possess a firearm under state law restored under this subchapter may file a uniform petition that includes a request to reinvest jurisdiction in the circuit court in the county in which the offense was committed and in which the person was convicted for the offense or offenses he or she is petitioning to have discharged, dismissed, and sealed.

(2)(A) A circuit court shall consider the request to reinvest jurisdiction if the person has completed all the requirements under this subchapter.

(B) The merits of a uniform petition may be considered only after the circuit court reinvests jurisdiction in the circuit court.

(C) The circuit court upon reinvestment of jurisdiction may not consider any other matters concerning the person filing the uniform petition not otherwise covered under this subchapter.

(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 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 opposing a uniform petition with the court setting forth reasons for the opposition to the uniform petition.

(B) A court may not sign a uniform order granting relief without a hearing and may not grant the uniform petition until thirty (30) days have passed since the uniform petition was served on the prosecuting attorney.

(3)(A) If after a hearing the court determines that the felony conviction shall be discharged, dismissed, and sealed, the uniform order shall be entered and filed with the circuit court clerk.

(B)(i) The circuit 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 in which the person appeared before the transfer or appeal of the case to circuit court.

(ii) The Administrative Office of the Courts shall only accept certified copies of the uniform orders filed in circuit court.

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

(A) Remove all petitions, orders, docket sheets, receipts, and documents relating to the felony conviction;

(B) Place the records described in subdivision (c)(1)(A) of this section in a file; and

(C) Sequester the records described in subdivision (c)(1)(A) of this section in a separate and confidential holding area within the clerk's office.

(2)(A) A docket sheet shall be prepared to replace the docket sheet containing information pertaining to the discharged, dismissed, and sealed felony conviction.

(B) The replacement docket sheet shall contain the docket number, a statement that the felony conviction has been discharged, dismissed, and sealed, and the date that the order to discharge, dismiss, and seal the felony conviction was issued.

(3) All indices to the file of the person with a discharged, dismissed, and sealed felony conviction shall be maintained in a manner to prevent general access to the identification of the person.

(d) The prosecuting attorney shall:

(1) Remove the entire case file and documents or other items related to the felony conviction;

(2) Place the records described in subdivision (d)(1) of this section in a file; and

(3) Sequester the records described in subdivision (d)(1) of this section in a confidential holding area within his or her office.

(e) The arresting agency shall:

(1) Remove its entire record file and documents or other items

relating to the felony conviction, including any evidence still in the arresting agency's possession;

(2) Place the records described in subdivision (e)(1) of this section in a file; and

(3) Sequester the records described in subdivision (e)(1) of this section in a confidential holding area within the arresting agency.

(f) Upon notification of a uniform order, all circuit clerks, district clerks, arresting agencies, and other criminal justice agencies maintaining records in a computer-generated database shall either segregate the entire record, including receipts, into a separate file or ensure by other electronic means that the discharged, dismissed, and sealed felony conviction shall not be available for general access unless otherwise authorized by law.

16-90-1505. Uniform petition and uniform order.

(a) The Arkansas Crime Information Center shall adopt and provide a uniform petition and uniform order to be used by a petitioner and any circuit court in this state.

(b) An order to discharge, dismiss, and seal a felony conviction covered by this subchapter is not effective unless the uniform order is entered.

(c)(1) The uniform petition shall include a statement verified under oath indicating whether the person has felony charges pending in any state or federal court and the status of the pending felony charges as well as whether the person is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(2) The uniform petition also shall include a statement that the information contained in the uniform petition is true and correct to the best of the petitioner's knowledge.

(d) The uniform order shall contain, at a minimum, the following data:

(1) The person's full name, race, gender, and date of birth;

(2) The person's full name at the time of arrest and adjudication of guilt, if applicable, if different from the person's current name;

(3) The felony offense for which the person was adjudicated guilty and that resulted in his or her right to lawfully possess a firearm under state law, and the date of the disposition;

- (4) The identity of the sentencing court;
- (5) The provision under this subchapter that provides for discharging and dismissing of the felony conviction, if applicable;
- (6) The specific felony conviction or convictions to be discharged, dismissed, and sealed;
- (7) The arrest tracking number;
- (8) The system identification number (SID); and
- (9) The Federal Bureau of Investigation number, if known.

16-90-1506. Burden of proof – Standard of review.

(a) For a uniform petition filed under this subchapter, unless the circuit court is presented with and finds that there is clear and convincing evidence that a felony conviction should not be discharged, dismissed, and sealed and the person's right to lawfully possess a firearm restored, the circuit court shall discharge, dismiss, and seal the felony conviction.

(b)(1) An appeal of the grant or denial of the uniform petition may be taken by either party.

(2) An appeal from the circuit court shall be taken as provided by Supreme Court rule, and the appellate court shall review the case using an abuse of discretion standard.

16-90-1507. Release of discharged, dismissed, and sealed felony conviction records.

(a)(1) As used in this section, "custodian" does not mean the Arkansas Crime Information Center.

(2) Access to data maintained by the center shall be governed by § 12-12-1001 et seq.

(b) The custodian of a record of a discharged, dismissed, and sealed felony conviction shall not disclose the existence of the record of a discharged, dismissed, and sealed felony conviction or release the record of a discharged, dismissed, and sealed felony conviction except when requested by:

(1) The person whose felony conviction was discharged, dismissed, and sealed or the person's attorney when authorized in writing by the person;

(2) A criminal justice agency, as defined in § 12-12-1001, and

the request is accompanied by a statement that the request is being made in conjunction with:

(A) An application for employment with the criminal justice agency by the person whose felony conviction has been discharged, dismissed, and sealed; or

(B) A criminal background check under the Polygraph Examiners Licensing Act, § 17-39-101 et seq., or the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act, § 17-40-101 et seq.;

(3) A court, upon a showing of:

(A) A subsequent adjudication of guilt of the person whose felony conviction was discharged or dismissed; or

(B) Another good reason shown to be in the interests of justice;

(4) A prosecuting attorney, and the request is accompanied by a statement that the request is being made for a criminal justice purpose;

(5) A state agency or board engaged in the licensing of healthcare professionals;

(6) The center; or

(7) The Arkansas Commission on Law Enforcement Standards and Training.

16-90-1508. Effect of discharge, dismissal, and sealing.

(a)(1) A person whose felony conviction has been discharged, dismissed, and sealed under this subchapter shall have all privileges and rights restored, including the right to lawfully possess a firearm under state law, and the conviction that has been discharged, dismissed, and sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law.

(2) A person who wants to reacquire the right to vote removed from him or her as the result of a felony conviction shall follow the procedures in Arkansas Constitution, Amendment 51, § 11.

(b)(1) Upon the entry of the uniform order, the person's underlying conduct shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the felony for which the person was convicted was discharged, dismissed,

and sealed does not exist.

(2) This subchapter does not prevent the use of the record of a prior felony conviction otherwise discharged, dismissed, and sealed under this subchapter for the following purposes:

(A) A criminal proceeding for any purpose not otherwise prohibited by law;

(B) Determination of offender status under the former § 5-64-413;

(C) Habitual offender status, § 5-4-501 et seq.;

(D) Impeachment upon cross-examination as dictated by the Arkansas Rules of Evidence;

(E) Healthcare professional licensure by a state agency or board;

(F) Any disclosure mandated by Rule 17, Rule 18, or Rule 19 of the Arkansas Rules of Criminal Procedure; or

(G) Determination of certification, eligibility for certification, or of the ability to act as a law enforcement officer, by the Arkansas Commission on Law Enforcement Standards and Training.

16-90-1509. Uniform petition and uniform order – Creation.

The Arkansas Crime Information Center shall develop and draft the form to be used for the uniform petition and uniform order under this subchapter.

16-90-1510. Filing fee.

The circuit clerk shall not collect a fee for filing the uniform petition under this subchapter.

16-90-1511. Retroactivity.

This subchapter applies to all felony convictions occurring before and after the effective date of this act.

/s/G. Stubblefield