

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1013

5 By: Representative V. Flowers
6

For An Act To Be Entitled

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

Subtitle

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18 TO ESTABLISH A PATH TO RESTORATION OF THE
19 RIGHT TO POSSESS A FIREARM; AND TO
20 PROVIDE FOR THE DISCHARGE, DISMISSAL, AND
21 SEALING OF A FELONY CONVICTION.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

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

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

- 35 (1) Convicted of a felony;
36 (2) Adjudicated mentally ill; or



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

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

7 (2) Subdivision (b)(1) of this section does not apply to a
 8 person whose case was dismissed and expunged under § 16-93-301 et seq. or §
 9 16-98-303(g).

10 (3) The determination by the jury or court that the person
 11 committed a felony does not constitute a conviction for purposes of
 12 subsection (a) of this section if the person is subsequently granted a pardon
 13 explicitly restoring the ability to possess a firearm or if the conviction is
 14 discharged, dismissed, and sealed under § 16-90-1601 et seq.

15
 16 SECTION 2. Arkansas Code § 5-73-309(5), concerning licensing
 17 requirements for a license to carry a concealed handgun, is amended to read
 18 as follows:

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

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

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

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

29 (D) The applicant's offense was discharged, dismissed, and
 30 sealed under § 16-90-1601 et seq.;

31
 32 SECTION 3. Arkansas Code Title 16, Chapter 90, is amended to add an
 33 additional subchapter to read as follows:

34
 35 Subchapter 16 – Firearm Right Restoration

1 16-90-1601. Scope.

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

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

7
 8 16-90-1602. Definitions.

9 As used in this subchapter:

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

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

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

18 (C) If applicable has:

19 (i) Been discharged from probation or parole;

20 (ii) Completed any suspended sentence;

21 (iii) Paid any court-ordered restitution;

22 (iv) Completed any court-ordered community service;

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

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

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

34 (2) "Conviction":

35 (A) Includes the following, after the final act of
 36 judgment:

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

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

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

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

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

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

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

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

20 (B) Does not include:

21 (i) An order nolle prosequi;

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

24 (iii) An acquittal for any reason;

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

29 (v) A court-ordered probationary period under:

30 (a) The former § 5-64-413; or

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

32 (vi) The entry of a plea of guilty or nolo
33 contendere without the court's making a finding of guilt or entering a
34 judgment of guilt with the consent of the defendant or the resultant
35 discharge, dismissal, and sealing of the defendant as prescribed by § 16-93-
36 301 et seq.;

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

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

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

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

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

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

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

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

22
 23 16-90-1603. Convictions prohibiting person from possessing firearm
 24 eligible for discharge, dismissal, and sealing.

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

29 (1) Homicide, § 5-10-101 et seq.;

30 (2) Kidnapping and related offenses, § 5-11-101 et seq.;

31 (3) Robbery, § 5-12-101 et seq.;

32 (4) Criminal attempt, § 5-3-201 et seq.;

33 (5) Terroristic threats and acts, § 5-13-301 et seq.;

34 (6) Sexual offenses, § 5-14-101 et seq.;

35 (7) Voyeurism offenses, § 5-16-101 et seq.;

36 (8) Death threats, § 5-17-101 et seq.;

- 1 (9) The Human Trafficking Act of 2013, § 5-18-101 et seq.;
2 (10) Domestic battering and assault, § 5-26-301 et seq.;
3 (11) Custody and visitation, § 5-26-501 et seq.;
4 (12) The Arkansas Protection of Children Against Exploitation
5 Act of 1979, § 5-27-301 et seq.;
6 (13) Use of children in sexual performances, § 5-27-401 et seq.;
7 (14) Computer crimes against minors, § 5-27-601 et seq.;
8 (15) Abuse of adults, § 5-28-101 et seq.;
9 (16) Damage or destruction of property, § 5-38-101 et seq.;
10 (17) Causing a catastrophe, § 5-38-202;
11 (18) Residential burglary, § 5-39-201;
12 (19) Aggravated residential burglary, § 5-39-204;
13 (20) First degree escape, § 5-54-110, second degree escape, § 5-
14 54-111, third degree escape, § 5-54-112, and permitting escape in the first
15 degree, § 5-54-113;
16 (21) Fleeing, § 5-54-125;
17 (22) Killing or injuring animals used by law enforcement or
18 search and rescue dogs, § 5-54-126;
19 (23) Terrorism, § 5-54-201 et seq.;
20 (24) Animals, § 5-62-101 et seq.;
21 (25) Trafficking a controlled substance, § 5-64-440;
22 (26) Aggravated riot, § 5-71-202;
23 (27) Stalking, § 5-71-229;
24 (28) Weapons, § 5-73-101 et seq.;
25 (29) The Arkansas Criminal Gang, Organization, and Enterprise
26 Act, § 5-74-101 et seq.;
27 (30) A felony that requires a person to register as a sex
28 offender under the Sex Offender Registration Act of 1997, § 12-12-901 et
29 seq.; or
30 (31) A felony involving violence as defined in § 5-4-501(d)(2).
31 (b)(1) A person may file only one (1) uniform petition during his or
32 her lifetime.
33 (2) A person filing a uniform petition may petition to
34 discharge, dismiss, and seal a felony and any related felonies that occurred
35 out of the same course of conduct or criminal episode but may not petition to
36 discharge, dismiss, and seal multiple felonies that have no causal

1 connection.

2
3 16-90-1604. Procedure.

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

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

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

16 (C) Upon reinvestment of jurisdiction, the circuit court
17 may not consider any other matters concerning the person filing the uniform
18 petition not otherwise covered under this subchapter.

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

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

25 (2)(A) The prosecuting attorney may file a notice opposing a
26 uniform petition with the court setting forth reasons for the opposition to
27 the uniform petition.

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

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

35 (B)(i) The circuit court clerk with whom a uniform order
36 is filed shall certify copies of the uniform order to the prosecuting

1 attorney who filed the underlying charges, the arresting agency, the Arkansas
2 Crime Information Center, and, if applicable, any district court in which the
3 person appeared before the transfer or appeal of the case to circuit court.

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

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

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

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

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

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

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

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

26 (d) The prosecuting attorney shall:

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

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

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

33 (e) The arresting agency shall:

34 (1) Remove its entire record file and documents or other items
35 relating to the felony conviction, including any evidence still in the
36 arresting agency's possession;

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

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

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

11
12 16-90-1605. Uniform petition and uniform order.

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

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

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

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

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

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

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

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

35 (4) The identity of the sentencing court;

36 (5) The provision under this subchapter that provides for

1 discharging and dismissing of the felony conviction, if applicable;

2 (6) The specific felony conviction or convictions to be
3 discharged, dismissed, and sealed;

4 (7) The arrest tracking number;

5 (8) The system identification number (SID); and

6 (9) The Federal Bureau of Investigation number, if known.

7
8 16-90-1606. Burden of proof – Standard of review.

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

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

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

19
20 16-90-1607. Release of discharged, dismissed, and sealed felony
21 conviction records.

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

24 (2) Access to data maintained by the center shall be governed by
25 § 12-12-1001 et seq.

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

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

34 (2) A criminal justice agency, as defined in § 12-12-1001, and
35 the request is accompanied by a statement that the request is being made in
36 conjunction with:

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

4 (B) A criminal background check under the Polygraph
5 Examiners Licensing Act, § 17-39-101 et seq., or the Private Security Agency,
6 Private Investigator, and School Security Licensing and Credentialing Act, §
7 17-40-101 et seq.;

8 (3) A court, upon a showing of:

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

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

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

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

17 (6) The center; or

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

20
21 16-90-1608. Effect of discharge, dismissal, and sealing.

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

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

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

36 (2) This subchapter does not prevent the use of the record of a

1 prior felony conviction otherwise discharged, dismissed, and sealed under
 2 this subchapter for the following purposes:

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

5 (B) Determination of offender status under the former § 5-
 6 64-413;

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

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

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

12 (F) Any disclosure mandated by Rule 17, Rule 18, or Rule
 13 19 of the Arkansas Rules of Criminal Procedure; or

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

17
 18 16-90-1609. Uniform petition and uniform order – Creation.

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

21
 22 16-90-1610. Filing fee.

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

25
 26 16-90-1611. Retroactivity.

27 This subchapter applies to all felony convictions occurring before, on,
 28 or after the effective date of this act.

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