

Amendment No. 1 to SB3520

Beavers
Signature of Sponsor

AMEND Senate Bill No. 3520

House Bill No. 2865*

By deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-32-101, is amended by adding the following new subsection:

(g)

(1) For purpose of this subsection (g), "nonviolent" offense means:

(A) The offense does not have as an element the use, attempted use, or threatened use of physical force against person or property of another,

(B) The offense is not a felony offense that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;

(C) The offense does not involve the use of a firearm;

(D) The offense is not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under title 40, chapter 39 part 2; and

(E) The offense did not result in causing the victim or victims to sustain a loss of twenty-five thousand dollars (\$25,000) or more.

(2) Notwithstanding the provisions of this section, effective July 1, 2012, a person is eligible to file petition for expungement of that person's public records involving a criminal offense if:

(A) At the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses in other

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states, other than a nonviolent offense committed during a single criminal episode for which the petition for expungement is filed.;

(B) The conviction was not for driving under the influence of an intoxicant as prohibited in Tennessee Code Annotated 55-10-401;

(C) The conviction was for a Class E felony or a misdemeanor;

(D) At the time of the filing of the petition for expungement at least five (5) years have elapsed since the completion of the sentence imposed for the offense;

(E) The person has fulfilled all the requirements of the sentence imposed by the court in which the individual was convicted of the non violent offense, including:

(i) Payment of all fines, restitution, court costs and other assessments;

(ii) Completion of any term of imprisonment or probation;

(iii) Meeting all conditions of supervised or unsupervised release; and

(iv) If so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.

(3) A person's whose offense was committed prior to July 1, 2012, is eligible to petition for expungement of that person's public records involving a criminal offense if:

(A) The person's offense was a nonviolent offense as defined in subdivision (1), and

(B) The offense was committed on or after November 1, 1989, the person meets all the requirements of subdivision (2), and the person was sentenced to three (3) years or less;

(C) The offense was committed prior to November 1, 1989, the person meets all the requirements of subdivision (2) except (2)(C), and the person was sentenced to a determinate sentence of three (3) years or less; or

(D) The offense was committed prior to November 1, 1989, the person meets all the requirements of subdivision (2) except (2)(C), and the person was sentenced to an indeterminate sentence for which the person served three (3) years or less; or

(4) A person seeking expungement shall petition the court in which the petitioner was convicted of the nonviolent offense for which the petition for expungement is filed. Upon filing of the petition, the clerk shall serve it on the district attorney general for that judicial district. Not later than sixty (60) days after service of the petition, the district attorney may submit recommendations to the court and provide a copy of such recommendations to the petitioner.

(5) Both the petitioner and the district attorney general may file evidence with the court relating to the petition.

(6) In making a decision on the petition, the court shall consider all evidence and weigh the interests of the petitioner against the best interests of justice and public safety.

(7) If the court denies the petition, the petitioner may not file another such petition until at least two (2) years from the date of the denial.

(8) The District Attorneys General Conference shall, by September 1, 2012 create a simple form to allow a lay person to petition the court for expungement under this subsection.

(9) The petition and proposed order shall be prepared by the office of the District Attorney General and given to the petitioner to be filed with the clerk of the court.

(10) The petitioner shall pay to the clerk of the court a fee of three hundred fifty dollars (\$350.00) upon the filing of the petition. Fifty dollars (\$50.00) of the fee shall be transmitted to the Tennessee Bureau of investigation for the purpose of defraying the costs incurred from the additional expungement petitions filed and granted as the result of this subsection. The clerk shall retain 5% of the fee and shall remit the remainder to the trustee to be deposited in the District Attorneys Fund for the required record search, preparation of the petition and the proposed order of expungement.

(11) The funds in the District Attorneys Fund may be used for law enforcement purposes, including but not limited to, the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, the purchase of equipment and supplies necessary to carryout prosecutorial functions, the expenses of travel in the performance of official duties of the office (no travel expenses shall be paid in excess of the rates authorized under state travel regulations), salaries and salary supplements, which may only be paid through the District Attorneys General Conference for support staff (subject to the limitation of Tennessee Code Annotated 40-3-209(b) on the use of any funds to supplement the salary of any assistant district attorney).

(12) Beginning on July 1, 2013, the Tennessee Bureau of Investigation shall review the number of expungement petitions pursuant to this subsection, the cost of processing each one and the amount of money paid in expungement fees to determine if the amount allotted the bureau to implement this subsection

is adequate and if some portion of such funds could be used for other criminal justice purposes such as the criminal injuries compensation fund or drug court funding. The bureau shall report its findings to the General Assembly in January of 2014.

SECTION 2. The clerk of the Court maintaining records expunged pursuant to this subsection shall keep such records confidential. These records shall not be public and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the District Attorney General, the defendant, the defendant's attorney and the Circuit or Criminal Court Judge.

SECTION 3. This act shall take effect July 1, 2012, the public welfare requiring it.