

Amendment No. 3 to SB3520

**Norris
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), "eligible petitioner" means:

(A) A person who was convicted of a violation of § 39-17-418 that was committed on or after on after November 1, 1989; or

(B) A person who was convicted of a violation of § 39-6-417(a)(2) that was committed prior to November 1, 1989.

(2) Notwithstanding the provisions of this section, effective July 1, 2012, an eligible petitioner may file a 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 states, other than the offense committed for which the petition for expungement is filed;

(B) 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;

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

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(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.

(4) A person seeking expungement shall petition the court in which the petitioner was convicted of the offense sought to be expunged is filed. Upon filing of the petition, the clerk shall serve the petition 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 enable a lay person to petition the court for expungement under this subsection (g).

(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. A petitioner shall be entitled to a copy of the order of expungement and such copy shall be sufficient proof that the person named in the order is no longer under any disability, disqualification or other adverse consequence resulting from the expunged conviction.

(10) The district public defender of each judicial district shall annually conduct at least one (1) educational program providing information and assistance with the expungement process generally and the expungement process established pursuant to this subsection. The district public defenders conference shall maintain a video of the educational program on the conference's web site, if available.

(11) 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 ten dollars (\$10.00) of the fee and shall remit the remainder to the trustee to be allocated in the following manner:

(A) Five percent (5%) to the public defenders expungement fund;

(B) Forty percent (40%) to the district attorneys expungement fund for the fiscal year 2012-2013; provided however for all fiscal years following 2012-2013 this percent shall be forty-five percent (45%); and

(C) Fifty-five percent (55%) to the state general fund for fiscal year 2012-2013; provided however for all fiscal years following 2012-2013 this percent shall be fifty percent (50%).

(12) There is created within the district attorneys general conference a district attorneys expungement fund. Monies in the district attorneys expungement fund shall be used to defray the expense incurred for the required record search and preparation of the petition and the proposed order of expungement under this subsection. Any remaining monies in the district attorneys expungement fund may be used by the district attorneys generals 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, provided all reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general, salaries and salary supplements, which may only be paid through the district attorneys general conference for support staff. Such payments shall be subject to the limitation of § 40-3-209(b) on the use of any funds to supplement the salary of any assistant district attorney. Monies in the district attorneys expungement fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year. All funds in the district attorneys expungement fund shall be subject to annual audit by the comptroller of the treasury.

(13) There is created within the state treasury a public defenders expungement fund. Monies in the public defenders expungement fund shall be used to defray the expense incurred by conducting the educational activities required pursuant to this subsection. Subject to annual appropriation, any

remaining monies in the public defenders expungement fund may be used in furtherance of the services and programs provided by public defenders for each judicial district. Monies in the public defenders expungement fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(14) 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 petition 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.

(15)

(A) Notwithstanding any other law to the contrary, an order of expungement granted pursuant to this subsection (g) entitles the petitioner to have all public records of the expunged conviction destroyed in the manner set forth in this section.

(B) Additionally, such an expungement has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial and conviction. Once the expungement order is granted and the petitioner pays the fee required by this subsection, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any provision of law shall be imposed or continued.

(C) A petitioner with respect to whom an order has been granted under this subsection (g) shall not be guilty of perjury or otherwise giving

a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial or conviction in response to any inquiry made of the petitioner for any purpose.

(D) Expungement under this subsection (g) means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged.

(E) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this subsection (g), and who is otherwise eligible under state or federal law to possess a firearm, shall be eligible to purchase a firearm pursuant to § 39-16-1316 and apply for and be granted a handgun carry permit pursuant to § 39-17-1351.

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.