

Amendment No. 4 to SB3520

McNally  
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 one of the following Class E felonies and sentenced to imprisonment for a term of three (3) years or less for an offense committed on or after on after November 1, 1989:

(i) 39-11-411 Accessory after the fact;

(ii) 39-13-306 Custodial interference where person not voluntarily returned by defendant;

(iii) 39-13-604(c)(2) Knowing dissemination of illegally recorded cellular communication;

(iv) 39-14-105(2) Theft (\$501-\$999);

(v) 39-14-114(c) Forgery (up to \$1,000);

(vi) 39-14-115 Criminal simulation (up to \$1,000);

(vii) 39-14-116(c) Hindering secured creditors;

(viii) 39-14-117(b) Fraud in insolvency;

(ix) 39-14-118 Fraudulent use of credit card or debit card (\$501-\$999);

(x) 39-14-121 Worthless checks (\$501-\$999);

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- (xi) 39-14-130 Destruction of valuable papers (\$501-\$999);
- (xii) 39-14-131 Destruction or concealment of will;
- (xiii) 39-14-133 Fraudulent or false insurance claim (\$501-\$999);
- (xiv) 39-14-137(b) Fraudulent qualifying for set aside programs (\$501-\$999);
- (xv) 39-14-138 Theft of trade secrets (\$501-\$999);
- (xvi) 39-14-139 Sale of recorded live performances without consent (\$501-\$999);
- (xvii) 39-14-143 Unauthorized solicitation for police, judicial or safety associations;
- (xviii) 39-14-147(f) Fraudulent transfer of motor vehicle with value of less than \$20,000;
- (xix) 39-14-149 Communication theft (\$501-\$999 (fine only));
- (xx) 39-14-153 Home improvement fraud (\$500-\$1,000);
- (xxi) 39-14-402 Burglary of an auto;
- (xxii) 39-14-408 Vandalism (\$501-\$999);
- (xxiii) 39-14-411 Utility service interruption or property damage;
- (xxiv) 39-14-505 Aggravated criminal littering (2nd and 3<sup>rd</sup> offenses involving certain weight or volume);

(xxv) 39-14-602 Violation of Tennessee Personal And Commercial Computer Act (\$501-\$999);

(xxvi) 39-14-603 Unsolicited bulk electronic mail (\$500-\$999);

(xxvii) 39-16-201 Taking telecommunication device into penal institution;

(xxviii) 39-16-302 Impersonation of licensed professional;

(xxix) 39-16-603 Evading arrest in motor vehicle where no risk to bystanders;

(xxx) 39-16-609(e) Failure to appear (felony);

(xxxi) 39-17-106 Gifts of adulterated candy or food;

(xxxii) 39-17-417(f) Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000);

(xxxiii) 39-17-417(g)(1) Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI; drug marijuana (fine not greater than \$1,000);

(xxxiv) 39-17-417(h) Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000);

(xxxv) 39-17-418(e) Simple possession or casual exchange (3rd offense);

(xxxvii) 39-17-422(c) Selling glue for unlawful purpose;

(xxxviii) 39-17-423(c) Counterfeit controlled substance;

(xxxix) 39-17-425(b)(1), (2), (3) Unlawful drug paraphernalia uses and activities;

(B) Except as provided in this subdivision (g)(1)(B), a person who was convicted of a misdemeanor offense committed on or after on after November 1, 1989. Misdemeanors excluded from consideration are:

- (i) 39-13-101(a)(1) and (2) Assault;
- (ii) 39-13-102 Aggravated assault of public employee;
- (iii) 39-13-111 Domestic assault;
- (iv) 39-13-113(g) Violation of protective or restraining order;
- (v) 39-13-113(h) Possession of firearm while order of protection in effect;
- (vi) 39-13-511 Public indecency 3rd or subsequent offense;
- (vii) 39-13-511 Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;
- (viii) 39-13-526(b)(1)(2) Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;
- (ix) 39-13-528 Soliciting minor to engage in Class E sexual offense;
- (x) 39-13-533 Unlawful sexual contact by authority figure;
- (xi) 39-14-118 Fraudulent use of credit/debit card (up to \$500);
- (xii) 39-14-304 Reckless burning;
- (xiii) 39-14-406 Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;
- (xiv) 39-15-201(b)(3) Coercion — abortion;
- (xv) 39-15-210 third or subsequent violation of “Child Rape Protection Act of 2006”;
- (xvi) 39-15-401(a) Child abuse (where child is between ages 7-17);
- (xvii) 39-15-401(b) Child neglect and endangerment (where child is between ages 7-13);
- (xviii) 39-15-404 Enticing a child to purchase intoxicating liquor — purchasing alcoholic beverage for child;

(xix) 39-15-404 Allow person 18-21 to consume alcohol on person's premises;

(xx) 39-15-414 Harboring or hiding a runaway child;

(xxi) 39-17-315 Stalking;

(xxii) 39-17-431 Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;

(xxiii) 39-17-437 Using substance or device to falsify drug test results and selling synthetic urine;

(xxiv) 39-17-438 Possession of the hallucinogenic plant Salvia Divinorum or the synthetic cannabinoids;

(xxv) 39-17-452 Sale or possession of synthetic derivatives or analogues of methcathinone;

(xxvi) 39-17-902(a) Importing, preparing, distributing, processing, or appearing in obscene material or A misdemeanors;

(xxvii) 39-17-907 Unlawful exhibition of obscene material;

(xii)39-17-911 Sale or loan to minors of harmful materials;

(xxviii) 39-17-918 Unlawful massage or exposure of erogenous areas;

(xxix) 39-17-1307(f)(1)(A) Possession of firearm after being convicted of misdemeanor crime of domestic violence;

(xxx) 39-17-1307(f)(1)(B) Possession of firearm while order of protection is in effect;

(xxxix) 39-17-1307(f)(1)(C) Possession of firearm while prohibited by state or federal law;

(xxxvii) 39-17-1312 Failure of adult to report juvenile carrying gun in school;

(xxxviii) 39-17-1320(a) Non parent providing handgun to a juvenile;

(xxxix) 39-17-1352 Failure to surrender handgun carry permit upon suspension;

(xl) 39-17-1363 Violent felon owning or possessing vicious dog;

(xli) 39-13-101(a)(3) Assault (offensive or provocative physical contact);

(xlii) 39-13-511(a) Public indecency — first or second offense (punishable by \$500 fine only);

(xliiii) 39-13-511(b)(2) Indecent exposure (victim 13 years old or older);

(xliv) 39-15-412(b) Disseminating smoking paraphernalia to minor after 3 prior violations;

(xlv) 39-16-404 Misuse of official information by public servant;

(xlvi) 39-17-317 Disorderly conduct at funerals;

(xlvii) 39-17-715 Possession of or consuming alcoholic beverages on K-12 school premises;

(xlviii) 39-17-914 Display for sale or rental of material harmful to minors; and

(xlix) 55-10-401 Driving under the influence of an intoxicant; or

(C) A person who was convicted of a felony or misdemeanor committed prior to November 1, 1989, if:

(i) The person was sentenced to a determinate sentence, of three (3) years or less;

(ii) The person was sentenced to an indeterminate sentence for which the person served three (3) years or less;

(iii) The person has never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to §§ 40-15-102—40-15-106 or § 40-35-313; and

(iv) The offense for which the person was convicted:

(A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

(B) Did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense;

(C) Did not involve the use or possession of a deadly weapon;

(D) Was 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; or any sex offense involving a minor;

(E) Did not result in the death, serious bodily injury or bodily injury to a person;

(F) Did not involve the use of alcohol or drugs and a motor vehicle;

(G) Did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance;

(H) Did not involve a minor as the victim of the offense; or

(l) 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, 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:

(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.