

Amendment No. 1 to SB1055

Gardenhire
Signature of Sponsor

AMEND Senate Bill No. 1055*

House Bill No. 1257

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 40-32-101, is amended by deleting the section and substituting:

As used in this chapter:

(1) "Court" includes a juvenile court exercising juvenile court jurisdiction over an adult who is charged with an offense that was committed when the person was eighteen (18) years of age or older;

(2) "Criminal offense" or "offense" includes, as the context requires, an implied consent violation under § 55-10-406;

(3) "Mistaken identity" means during the investigation of a criminal offense, a person has been arrested, charged, or indicted for a criminal act and subsequent investigation has revealed that the person arrested was not the individual the arresting officer believed the person to be; and

(4) "Public records," for purposes of expunction only, does not include:

(A) Arrest histories;

(B) Investigative reports;

(C) Appellate court records or appellate court opinions;

(D) Signed orders of expunction that are maintained as confidential records and are not open for inspection by members of the public;

(E) Intelligence information of law enforcement agencies;

(F) Files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public; and

(G) Records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issued under this section is directed to the department of children's services or department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefore. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 32, is amended by adding the following new sections:

40-32-106.

(a)

(1) All public records of a person who has been charged with a misdemeanor or a felony must, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

(A) The charge against the person has been dismissed for a reason other than the successful completion of a pretrial diversion program pursuant to §§ 40-15-102 – 40-15-107 or a judicial diversion program pursuant to § 40-35-313;

(B) A no true bill was returned by a grand jury;

(C) The person was arrested and released without being charged;

(D) A nolle prosequi was entered in the defendant's case;

(E) A verdict of not guilty was returned, whether by a judge following a bench trial or by a jury on all charges for which the defendant was accused;

(F) Except as provided in subdivision (b)(2), the person has been charged with an implied consent violation under § 55-10-406 and the violation was dismissed without cost;

(G) The charge has been abated by death, in which case, notwithstanding this subsection (a) to the contrary, a personal representative of the decedent may apply for an order of expunction;

(H) The court finds that the person was arrested or charged due to mistaken identity. A person seeking expunction due to a case of mistaken identity may provide evidence of the relevant circumstances in a petition and may request that the court order the expunction to be expedited. If the court finds that the person was arrested or charged due to mistaken identity, then the court may order the Tennessee bureau of investigation and any other entity that performs expunction to expunge the records of the person in an expedited manner; or

(I) A person has been charged and convicted with a misdemeanor or felony while protesting or challenging a state law or municipal ordinance the purpose of which was to maintain or enforce racial segregation or racial discrimination, if:

(i) Thirty-seven (37) years or more have elapsed since the date of conviction for the offense being expunged and the petitioner has not been convicted of any other offense, excluding minor traffic violations, during that period of time;

(ii) Any period of supervision due to conviction has been completed;

(iii) The offense was a misdemeanor, Class C, Class D, or Class E felony not otherwise excluded pursuant to subdivision (a)(1)(I)(iv), or, if committed prior to November 1, 1989, would be an eligible offense under § 40-32-107(a) if committed after November 1, 1989;

(iv) The offense was not:

(a) A Class A or Class B felony or a Class C felony described in § 40-15-101(a)(1)(B)(iii);

(b) A sexual offense described in § 40-15-105(a)(1)(B)(ii);

(c) An offense prohibited by title 55, chapter 10, part 4;

(d) Vehicular assault as prohibited by § 39-13-106; or

(e) For an offense committed prior to November 1, 1989, an ineligible offense under § 40-32-107(a) if the offense had been committed after November 1, 1989; and

(v) The district attorney general is served a copy of the petition for expunction by certified mail, return receipt requested, and the district attorney general does not file an objection with the court within twenty (20) calendar days of receipt of the petition.

(2) All public records of a person must, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person if:

(A) An order of protection authorized by title 36, chapter 3, part 6 was successfully defended and denied by the court; or

(B) The bond has expired, if no surety on the bond is required to fulfill the obligations of the bond, for a person required to post bond under § 38-3-109.

(b) Notwithstanding subsection (a), a person is not entitled to the expunction of their records if:

(1) The person was charged with an implied consent violation under § 55-10-406 and the violation was dismissed with costs;

(2) The person was charged with an implied consent violation under § 55-10-406 and the violation was dismissed without costs, but the person held:

(A) A commercial driver license or a commercial learner permit, as defined in § 55-50-102, and the offense was committed within a motor vehicle, as defined in § 55-50-102; or

(B) Any driver license and the offense was committed within a commercial motor vehicle, as defined in § 55-50-102;

(3) The person was found not guilty by reason of insanity or incompetent to stand trial by a court in a criminal proceeding; or

(4) Except as provided in subsection (c):

(A) The person is charged with an offense, is not convicted of the charged offense, but is convicted of an offense relating to the same criminal conduct or episode as the charged offense, including a lesser included offense; provided, however, any moving or nonmoving traffic offense must not be considered an offense as used in this subdivision (b)(4); or

(B) The person is charged with multiple offenses or multiple counts in a single indictment and is convicted of:

(i) One (1) or more of the charged offenses or counts in the indictment; or

(ii) An offense relating to the same criminal conduct or episode as one (1) of the offenses charged in the indictment, including a lesser included offense.

(c)

(1) Subdivision (b)(4) does not apply if the person is a victim of a human trafficking offense, the conviction is a result of victimization, and the person is applying for expunction relief under § 40-32-105 or if the person is seeking relief under subdivision (c)(2).

(2) A person who is ineligible for expunction of the person's records pursuant to subdivision (b)(4) is, upon petition by that person to the court having jurisdiction in the previous action, entitled to removal of public records from electronic databases relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. The public records must be removed from the relevant electronic databases of the national crime information center system and similar state databases, and the person must be entered into the Tennessee bureau of investigation's expunged criminal offender and pretrial diversion database with regard to the offenses removed pursuant to this subdivision (c)(2). The public records must also be removed from any public electronic database maintained by a court clerk. This subdivision (c)(2) does not require court clerks to expunge records relating to an offense for which the person was convicted. Court clerks are not liable for any errors or omissions relating to the removal and destruction of records under this section.

(d)

(1) Except as provided in subdivision (d)(2), a person may petition for expunction of public records in a criminal case if the charges were dismissed as a result of the person's successful completion of a pretrial diversion program pursuant to §§ 40-15-102 – 40-15-107 or a judicial diversion program pursuant to § 40-35-313.

(2) The records of a person who successfully completes a pretrial diversion program pursuant to §§ 40-15-102 – 40-15-107 or a judicial diversion program pursuant to § 40-35-313, must not be expunged pursuant to this section if the offense for which the person was diverted was a sexual offense or a violent sexual offense, as defined in § 40-39-202.

(3) A person applying for expunction of records pursuant to subdivision (d)(1) must be charged the appropriate clerk's fee pursuant to § 8-21-401 for destroying the records.

(e)

(1) A person meeting the requirements of this section may apply to the court having jurisdiction in the previous action for an order of expunction.

(2) Upon a verdict of not guilty being returned, whether by a judge following a bench trial or by a jury, on all charges for which the defendant was accused, the judge shall inquire of the person acquitted whether such person requests that all public records associated with the charges for which such person was acquitted be removed and destroyed without cost to the person and without the requirement that the person petition for destruction of such records. If the person requests that the public records related to such charges be removed and destroyed, then the court shall so order. If the person acquitted does not request that such records be destroyed at the time the judge inquires pursuant to this subsection (e), but subsequently requests that such records be

destroyed, then the person must apply to the court having jurisdiction in the previous action for an order of expunction.

(3) If a person charged and convicted with a misdemeanor or felony while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination is deceased, then a petition for expunction pursuant to subdivision (a)(1)(I) may be filed by a person who is able to establish legal authority to act on the behalf of the deceased person.

(f) An order of expunction granted pursuant to this section has the effect provided in § 40-32-110.

(g) Notwithstanding another law to the contrary, upon request of the petitioner, records or documents subject to the destruction requirement of this section that are utilized exclusively for education purposes and are displayed in public museums, libraries, and buildings are exempt from the destruction requirement.

(h) It is the intent of the general assembly that a person is entitled to the expunction of public records in a criminal case only if the person is entitled to have all public records removed and destroyed by reason of one (1) of the results specified in this chapter.

40-32-107.

(a)

(1) Except as provided in subdivision (a)(2), as used in this subsection

(a), "eligible petitioner" means:

(A) A person who was convicted of one (1) of the following Class C felonies, or an attempt, conspiracy, facilitation, or solicitation to commit one (1) of the following Class C felonies, committed on or after November 1, 1989:

(i) Section 39-14-103 – Theft of property;

(ii) Section 39-14-104 – Theft of services;

(iii) Section 39-14-114 – Forgery;

(iv) Section 39-14-115 – Criminal simulation;

(v) Section 39-14-118 – Illegal possession or fraudulent use of a credit card or debit card;

(vi) Section 39-14-121 – Worthless checks;

(vii) Section 39-14-130 – Destruction of valuable papers;

(viii) Section 39-14-133 – Fraudulent or false insurance claims;

(ix) Section 39-14-137 – Fraudulent qualifying for set-aside programs;

(x) Section 39-14-138 – Theft of trade secrets;

(xi) Section 39-14-139 – Sale of recorded live performances without consent;

(xii) Section 39-14-149 – Communication theft;

(xiii) Section 39-14-150(c) – Identity theft trafficking;

(xiv) Section 39-14-152 – Use of a counterfeit mark or logo;

(xv) Section 39-14-154 – Home improvement fraud;

(xvi) Section 39-14-408 – Vandalism;

(xvii) Section 39-14-602(b)(5) – Violation of Tennessee Personal and Commercial Computer Act;

(xviii) Section 39-14-603 – Unsolicited bulk electronic mail;

(xix) Section 39-14-804 – Theft of animal from or damage to an animal facility;

(xx) Section 39-17-417(c) – Manufacture, deliver, sale, or possession of Schedule II drug, including cocaine or methamphetamine in an amount less than point five (0.5) grams;

(xxi) Section 39-17-417(e) – Manufacture, deliver, sale, or possession of flunitrazepam;

(xxii) Section 39-17-417(g)(3) – Manufacture, deliver, sale, or possession of Schedule VI controlled substance;

(xxiii) Section 39-17-454(c) – Manufacture, delivery, dispense, or sale or possession with the intent to manufacture, deliver, dispense, or sale or possession of a controlled substance analogue (second or subsequent violation); and

(xxiv) Section 39-17-607(b) – Influencing or attempting to influence lottery;

(B) A person who was convicted of one (1) of the following Class D felonies, or an attempt, conspiracy, facilitation, or solicitation to commit one (1) of the following Class D felonies, committed on or after November 1, 1989:

(i) Section 39-14-103 – Theft of property;

(ii) Section 39-14-104 – Theft of services;

(iii) Section 39-14-112 – Extortion;

(iv) Section 39-14-114 – Forgery;

(v) Section 39-14-115 – Criminal simulation;

(vi) Section 39-14-118 – Illegal possession or fraudulent use of credit card or debit card;

(vii) Section 39-14-121 – Worthless checks;

(viii) Section 39-14-130 – Destruction of valuable papers;

(ix) Section 39-14-133 – False or fraudulent insurance claims;

(x) Section 39-14-137 – Fraudulent qualifying for set-aside programs;

(xi) Section 39-14-138 – Theft of trade secrets;

(xii) Section 39-14-139 – Sale of recorded live performances without consent;

(xiii) Section 39-14-147 – Fraudulent transfer of motor vehicle valued at twenty thousand dollars (\$20,000) or more;

(xiv) Section 39-14-149 – Communication theft;

(xv) Section 39-14-150(b) – Identity theft;

(xvi) Section 39-14-152 – Use of a counterfeit mark or logo;

(xvii) Section 39-14-154 – Home improvement fraud;

(xviii) Section 39-14-402 or § 39-13-1002 [as applicable] – Burglary--other than habitation or automobile;

(xix) Section 39-14-408 – Vandalism;

(xx) Section 39-14-602(a)-(c) – Violation of Tennessee Personal and Commercial Computer Act;

(xxi) Section 39-14-603 – Unsolicited bulk electronic mail;

(xxii) Section 39-16-502(a)(1) or (a)(2) – False report to law enforcement not involving bomb, fire, or emergency;

(xxiii) Section 39-17-417(d) – Manufacture, deliver, sale, or possession of Schedule III drug;

(xxiv) Section 39-17-417(e) – Manufacture, deliver, sale, or possession of Schedule IV drug;

(xxv) Section 39-17-417(g)(2) – Manufacture, deliver, sale, or possession of certain Schedule VI drugs;

(xxvi) Section 39-17-430 – Prescribing or selling steroid for unlawful purpose;

(xxvii) Section 39-17-433 – Promoting manufacture of methamphetamine;

(xxviii) Section 39-17-438 – Produce, manufacture, delivery, sale, or possession of hallucinogenic plant *salvia divinorum* or the synthetic cannabinoids (first violation);

(xxix) Section 39-17-454(c) – Manufacture, deliver, dispense, sell, or possess with intent to manufacture, deliver, dispense, or sell a controlled substance analogue (first violation);

(xxx) Section 39-17-607(a) – Making counterfeit or altering lottery ticket;

(xxxi) Section 39-17-608 – Making material false statement on lottery application or record;

(xxxii) Section 39-17-654(c) – Unauthorized person conducting charitable gaming event; and

(xxxiii) Section 53-11-402(a)(3) – Drug fraud;

(C) A person who was convicted of one (1) of the following Class E felonies, or an attempt, conspiracy, facilitation, or solicitation to commit one (1) of the following Class E felonies, committed on or after November 1, 1989:

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

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

- (iii) Section 39-13-604(c)(2) – Knowing dissemination of illegally recorded cellular communication;
- (iv) Section 39-14-105(a)(2) – Theft;
- (v) Section 39-14-114(c) – Forgery;
- (vi) Section 39-14-115 – Criminal simulation;
- (vii) Section 39-14-116(c) – Hindering secured creditors;
- (viii) Section 39-14-117(b) – Fraud in insolvency;
- (ix) Section 39-14-118 – Fraudulent use of credit card or debit card;
- (x) Section 39-14-121 – Worthless checks;
- (xi) Section 39-14-130 – Destruction of valuable papers;
- (xii) Section 39-14-131 – Destruction or concealment of will;
- (xiii) Section 39-14-133 – Fraudulent or false insurance claim;
- (xiv) Section 39-14-137(b) – Fraudulent qualifying for set-aside programs;
- (xv) Section 39-14-138 – Theft of trade secrets;
- (xvi) Section 39-14-139 – Sale of recorded live performances without consent;
- (xvii) Section 39-14-143 – Unauthorized solicitation for police, judicial, or safety associations;
- (xviii) Section 39-14-147(f) – Fraudulent transfer of motor vehicle with value of less than twenty thousand dollars (\$20,000);
- (xix) Section 39-14-149 – Communication theft;
- (xx) Section 39-14-154 – Home improvement fraud;
- (xxi) Section 39-13-1002 – Burglary of an automobile;

- (xxii) Section 39-14-408 – Vandalism;
- (xxiii) Section 39-14-411 – Utility service interruption or property damage;
- (xxiv) Section 39-14-505 – Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume);
- (xxv) Section 39-14-602 – Violation of Tennessee Personal and Commercial Computer Act;
- (xxvi) Section 39-14-603 – Unsolicited bulk electronic mail;
- (xxvii) Section 39-16-201 – Taking telecommunication device into penal institution;
- (xxviii) Section 39-16-302 – Impersonation of licensed professional;
- (xxix) Section 39-16-603 – Evading arrest in motor vehicle where no risk to bystanders;
- (xxx) Section 39-16-609(e) – Failure to appear (felony);
- (xxxi) Section 39-17-106 – Gifts of adulterated candy or food;
- (xxxii) Section 39-17-417(f) – Manufacture, delivery, sale, or possession of Schedule V drug;
- (xxxiii) Section 39-17-417(g)(1) – Manufacture, delivery, sale, or possession of not less than one-half ounce (1/2 oz.) and not more than ten pounds (10 lbs.) of Schedule VI drug marijuana;
- (xxxiv) Section 39-17-417(h) – Manufacture, delivery, sale or possession of Schedule VII drug;
- (xxxv) Section 39-17-418(e) – Simple possession or casual exchange (third offense);

(xxxvi) Section 39-17-422(c) – Selling glue for unlawful purpose;

(xxxvii) Section 39-17-423(c) – Counterfeit controlled substance;

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

(xxxix) Section 39-14-152 – Use of a counterfeit mark or logo; and

(xl) Section 39-14-903 – Money laundering offenses;

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

(i) Section 39-13-101(a)(1) and (2) – Assault, if the offense was committed prior to July 1, 2000;

(ii) Section 39-13-102 – Aggravated assault of public employee;

(iii) Section 39-13-111 – Domestic assault;

(iv) Section 39-13-113(g) – Violation of protective or restraining order;

(v) Section 39-13-113(h) – Possession of firearm while order of protection in effect;

(vi) Section 39-13-511 – Public indecency (third or subsequent offense);

(vii) Section 39-13-511 – Indecent exposure (victim under thirteen (13) years of age) or by person in penal institution exposing to a guard;

(viii) Section 39-13-526(b)(1) and (2) – Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;

(ix) Section 39-13-528 – Soliciting minor to engage in Class E sexual offense;

(x) Section 39-13-509 – Unlawful sexual contact by authority figure;

(xi) Section 39-13-514(b)(3)(A) – Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability;

(xii) Section 39-14-304 – Reckless burning;

(xiii) Section 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) Section 39-15-201(b)(3) [repealed] – Coercion--abortion;

(xv) Section 39-15-210 – Third or subsequent violation of Child Rape Protection Act of 2006;

(xvi) Section 39-15-401(a) – Child abuse (where child is between seven (7) and seventeen (17) years of age);

(xvii) Section 39-15-401(b) – Child neglect and endangerment (where child is between seven (7) and thirteen (13) years of age);

(xviii) Section 39-15-404 – Enticing a child to purchase intoxicating liquor – purchasing alcoholic beverage for child;

(xix) Section 39-15-404 – Allowing a minor to consume alcohol on person's premises;

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

(xxi) Section 39-17-315 – Stalking;

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

(xxiv) Section 39-17-438 – Possession of the hallucinogenic plant salvia divinorum or the synthetic cannabinoids;

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

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

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

(xxviii) Section 39-17-911 – Sale or loan to minors of harmful materials;

(xxix) Section 39-17-918 – Unlawful massage or exposure of erogenous areas;

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

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

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

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

(xxxiv) Section 39-17-1320(a) – Nonparent providing handgun to a juvenile;

(xxxv) Section 39-17-1352 – Failure to surrender handgun carry permit upon suspension;

(xxxvi) Section 39-17-1363 – Violent felon owning or possessing vicious dog;

(xxxvii) Section 39-13-101(a)(3) – Assault (offensive or provocative physical contact);

(xxxviii) Section 39-13-511(a) – Public indecency--first or second offense;

(xxxix) Section 39-13-511(b)(2) – Indecent exposure (victim thirteen (13) years of age or older);

(xl) Section 39-15-412(b) – Disseminating smoking paraphernalia to minor after three (3) prior violations;

(xli) Section 39-16-404 – Misuse of official information by public servant;

(xlii) Section 39-17-317 – Disorderly conduct at funerals;

(xlili) Section 39-17-715 – Possession of or consuming alcoholic beverages on kindergarten through grade twelve (K-12) school premises;

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

(xlv) Section 55-10-401 – Driving under the influence of an intoxicant;

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

(i) 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

(ii) 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 sexual offense for which the offender is required to register as a sexual offender or violent sexual offender under chapter 39, part 2 of this title, or any sexual offense involving a minor;

(e) Did not result in the death, serious bodily injury, or bodily injury of 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 controlled substance or a Schedule II controlled substance in an amount listed in § 39-17-417(i);

(h) Did not involve a minor as the victim of the offense; and

(i) Did not result in causing the victim or victims to sustain a loss of sixty thousand dollars (\$60,000) or more; or

(F) A person who was convicted of more than one (1) of the offenses listed in this subdivision (a)(1), if the conduct upon which each conviction is based occurred contemporaneously, occurred at the same location, represented a single continuous criminal episode with a single criminal intent, and all such convictions are eligible for expunction under this part. The offenses of a person who is an eligible petitioner under this subdivision (a)(1)(F) must be considered a single offense for the purposes of this section so that the person is eligible for expunction consideration if all other requirements are met.

(2) A person is not an eligible petitioner for purposes of this subsection (a) if the person was convicted of an offense involving the manufacture, delivery, sale, or possession of a controlled substance and at the time of the offense the person held:

(A) A commercial driver license, as defined in § 55-50-102, and the offense was committed within a motor vehicle, as defined in § 55-50-102; or

(B) Any driver license and the offense was committed within a commercial motor vehicle, as defined in § 55-50-102.

(3) An eligible petitioner under this subsection (a) may file a petition for expunction of that person's public records involving a criminal offense eligible for expunction if:

(A)

(i) The offense for which the person is seeking expunction occurred prior to any conviction for a criminal offense that is ineligible for expunction, including convictions for federal offenses and offenses in other states that would be ineligible for expunction in this state; and

(ii) The person has not previously been granted expunction for another criminal offense under this subsection (a), subsection (b), or subsection (c);

(B) At the time of the filing of the petition for expunction at least:

(i) Five (5) years have elapsed since the completion of the sentence imposed for the offense the person is seeking to have expunged, if the offense is a misdemeanor or Class E felony; or

(ii) Ten (10) years have elapsed since the completion of the sentence imposed for the offense the person is seeking to have expunged, if the offense is a Class C or D felony; and

(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 expunction pursuant to this subsection (a) shall petition the court pursuant to § 40-32-108.

(b)

(1) As used in this subsection (b), an "eligible petitioner" means a person who is seeking expunction of no more than two (2) offenses and:

(A) Each of the offenses for which the petitioner seeks expunction:

(i) Are offenses that are eligible for expunction under subdivision (a)(1); and

(ii) Occurred prior to any conviction for a criminal offense that is ineligible for expunction, including convictions for federal offenses and offenses in other states that would be ineligible in this state;

(B) The offenses were:

(i) Two (2) misdemeanors; or

(ii) One (1) felony and one (1) misdemeanor;

(C) At the time of the filing of the petition for expunction at least:

(i) Five (5) years have elapsed since the completion of the sentence imposed for any misdemeanor or Class E felony the person is seeking to have expunged; and

(ii) Ten (10) years have elapsed since the completion of the sentence imposed for any Class C or D felony offense the person is seeking to have expunged;

(D) The person has fulfilled all the requirements of the sentences imposed by the court for each offense the petitioner is seeking to expunge, including:

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

(ii) Completion of any term of imprisonment or probation for each offense;

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

(iv) 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, if so required by the conditions of any of the sentences imposed; and

(E) The person has not previously been granted expunction under subsection (a), this subsection (b), or subsection (c) for another criminal offense.

(2) If a person was convicted of more than one (1) offense listed in subdivision (a)(1) and the conduct upon which each conviction is based occurred contemporaneously, occurred at the same location, represented a single continuous criminal episode with a single criminal intent, and all such convictions

are eligible for expunction under this part, then such convictions must be considered a single offense for purposes of subdivision (b)(1).

(3) A person seeking expunction pursuant to this subsection (b) shall petition the court pursuant to § 40-32-108.

(c)

(1) As used in this subsection (c), an "eligible petitioner" means a person who was convicted of a violation of § 2-19-107 – illegal registration or voting, if:

(A) At the time of the filing of the petition for expunction, at least fifteen (15) years have elapsed since the completion of the sentence imposed for the offense the person is seeking to have expunged;

(B) The person has fulfilled all requirements of the sentence imposed by the court for the offense the petitioner is seeking to expunge, including:

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

(ii) Completion of any term of imprisonment or probation for the offense; and

(iii) Meeting all conditions of supervised or unsupervised release for the offense;

(C) The offense for which the person is seeking expunction occurred prior to any conviction for a criminal offense that is ineligible for expunction, including convictions for federal offenses and offenses in other states that would be ineligible for expunction in this state; and

(D) The person has not previously been granted expunction under this subsection (c), or under subsection (a) or subsection (b) for another criminal offense.

(2) A person seeking expunction pursuant to this subsection (c) shall petition the court pursuant to § 40-32-108.

(d)

(1) As used in this subsection (d), "eligible petitioner" means a person who was convicted of a nonviolent crime if the person:

(A) Petitioned the court in which the petitioner was convicted of the offense and the judge finds that the offense was a nonviolent crime;

(B) Petitioned for and received a positive vote from the board of parole to receive a pardon; and

(C) Received a pardon by the governor.

(2) An eligible petitioner under subdivision (d)(1) may file a petition for expunction of that person's public records involving the crime.

(3) A person seeking expunction pursuant to this subsection (d) shall petition the court pursuant to § 40-32-108.

40-32-108.

(a) A person seeking expunction pursuant to § 40-32-107 shall petition the court in which the petitioner was convicted of the offense sought to be expunged. A person applying for expunction of records pursuant to this section must be charged the appropriate court clerk's fee pursuant to § 8-21-401.

(b) 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.

(c)

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

(2) The district attorney general may file evidence relating to the petition under seal for review by the court. Evidence filed under seal by the district attorney general is confidential and is not a public record.

(d)

(1) The court shall enter an order granting or denying the petition no sooner than sixty-one (61) days after service of the petition upon the district attorney general. Prior to entering an order on the petition, the court shall review the Tennessee bureau of investigation certificate, as required by § 40-32-102(c), and consider all evidence submitted by the petitioner and the district attorney general, including any evidence submitted by the district attorney general under seal pursuant to subdivision (c)(2).

(2) In making a decision on the petition, the court shall weigh the interest of the petitioner against the best interests of justice and public safety; provided, that if the petitioner is an eligible petitioner pursuant to § 40-32-107(a)(1)(A)–(E) and meets the applicable requirements in § 40-32-107, then there is a rebuttable presumption that the petition should be granted.

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

(e) The petition and proposed order must 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 is entitled to a copy of the order of expunction, and such copy is 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.

(f) The clerk of the court maintaining records expunged pursuant to this section shall keep such records confidential. Records expunged pursuant to § 40-32-107 are not 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 judge.

(g) There is created within the district attorneys general conference a district attorneys expunction fund. Moneys in the district attorneys expunction fund must be used to defray the expense incurred for the required record search and preparation of the petition and the proposed order of expunction under this section. Any remaining moneys in the district attorneys expunction fund may be used by the district attorneys general 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 carry out prosecutorial functions, and the expenses of travel in the performance of official duties of the office; provided, all reimbursement for travel expenses must 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 and reporter, and salaries and salary supplements, which may only be paid through the district attorneys general conference for support staff. Such payments are subject to the limitation of § 40-3-209(b) on the use of any funds to supplement the salary of any assistant district attorney. Moneys in the district attorneys expunction fund do not revert to the general fund but must be carried forward into the subsequent fiscal year. All funds in the district attorneys expunction fund are subject to annual audit by the comptroller of the treasury.

(h) There is created within the state treasury a public defenders expunction fund. Moneys in the public defenders expunction fund must be used to defray the expenses incurred by conducting educational activities. Subject to annual appropriation, any remaining moneys in the public defenders expunction fund may be used in furtherance of the services and programs provided by public defenders for each judicial district. Moneys in the public defenders expunction fund do not revert to the general fund but must be carried forward into the subsequent fiscal year.

(i) An order of expunction granted pursuant to this section has the effect provided in § 40-32-110.

40-32-109.

(a) A person may petition for expunction of the person's arrest record if the court with jurisdiction over the offense for which the person was arrested has no history of the person's arrest for the offense within the court's records. Upon filing of the petition, the clerk shall serve the petition on the district attorney general for that judicial district.

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

(c) The clerk's office shall search the court's records and certify to the court whether there is any history of the person's arrest for the offense at issue within the court's records.

(d) Prior to entering an order on the petition, the court shall review and consider the clerk's certification and all evidence submitted by the petitioner and the district attorney general. The court may enter an order of expunction of the arrest record if the court finds that there is no history of the person's arrest for the offense within the court's record.

(e) A person petitioning the court for expunction pursuant to this section must be charged the appropriate clerk's fee pursuant to § 8-21-401.

(f) An order of expunction granted pursuant to this section has the effect provided in § 40-32-110.

40-32-110.

(a) Notwithstanding another law to the contrary, an order of expunction granted pursuant to this chapter entitles the petitioner to have all public records of the expunged conviction destroyed in the manner set forth in this chapter.

(b) An expunction has the legal effect of restoring the petitioner, in contemplation of the law, to the same status occupied before the arrest, indictment, information, trial,

and conviction. Once the expunction order is granted, the person must not suffer any adverse effects, or direct or indirect collateral disabilities or consequences, by virtue of the criminal offense that was expunged. Expunction means, in contemplation of law, the conviction for the expunged offense never occurred.

(c) A person with respect to whom an order of expunction has been granted is not 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 person for any purpose.

(d) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a person who is granted expunction pursuant to this chapter, and who is otherwise eligible under state or federal law to possess a firearm, is eligible to purchase a firearm pursuant to § 39-17-1316 and apply for and be granted a handgun carry permit pursuant to § 39-17-1351.

(e) A person seeking expunction pursuant to this chapter is entitled to a copy of the order of expunction, and such copy is sufficient proof that the person named in the order is no longer under any disability, disqualification, or other adverse consequence resulting from the expunged records.

SECTION 3. Tennessee Code Annotated, Section 40-32-102, is amended by adding the following as a new subsection:

(c)

(1) The Tennessee bureau of investigation (TBI) shall develop a request for certification form to be completed by the court and submitted to the TBI prior to entering an order of expunction. The court is not required to submit a certificate to the TBI if the expungement is pursuant to § 40-32-109 or § 40-32-106, unless the expunction was the result of the successful completion of a pretrial diversion program, pursuant to §§ 40-15-102 – 40-15-107 or judicial diversion program pursuant to § 40-35-313. The certificate must contain the name of the person seeking expunction, the person's date of birth and social

security number, the offense that the person is seeking to have expunged, the date of arrest, and the appropriate state control number as referenced in § 8-4-115. The TBI shall provide access to the certificate to each clerk that accepts petitions for expunction.

(2) After receiving a request for certification, the TBI shall determine if the submitted offense is eligible for expunction pursuant to § 40-32-107 or § 40-32-105 and note the determination on the certificate. The TBI shall provide the court with a copy of the certificate containing the determination, or an explanation why a determination cannot be reached. The certificate may also be distributed to the district attorney and the defendant or the defendant's attorney.

(3) An order of expunction must not be entered by the court unless a certificate, as required by this subsection (c), is attached to the order of expunction.

(4) The certificate provided by the TBI pursuant to subdivision (c)(2) is only a certification as to whether the submitted offense is eligible for expunction. The certification is not a certification that the defendant is eligible for expunction, and the court continues to have the duty to determine eligibility. The TBI is not required to search any other source or database in order to make the certification required by this subsection (c).

(d) A court ordering the expunction of a person's public records of a criminal offense pursuant to this chapter shall send or cause to be sent a copy of the expunction order to the Tennessee bureau of investigation within thirty (30) days from the date of the expunction order for entry into its expunged offender and pretrial diversion database. The order must contain the name of the person seeking expunction, the person's date of birth and social security number, the offense that was dismissed, the appropriate state control number as referenced in § 8-4-115, the date and cause of the dismissal, and the date the order of expunction is entered.

(e)

(1) The clerk of the court maintaining records expunged pursuant to this chapter shall keep such records confidential.

(2) Release of confidential records or information contained therein other than to law enforcement agencies for law enforcement purposes is a Class A misdemeanor and is punishable as described in § 40-32-104.

(3) This chapter does not deny access to any record to the comptroller of the treasury or the comptroller of the treasury's agent for purposes of audit investigation. The comptroller of the treasury or the comptroller of the treasury's agent having this access shall protect the confidential nature of the records that are not otherwise public under other statutes.

(4) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding must be made to the attorney upon request.

(5) Notwithstanding subdivisions (e)(1) and (2), a court entering an order of expunction pursuant to this chapter may release a copy of the order of expunction to the petitioner.

SECTION 4. Tennessee Code Annotated, Section 7-51-1701(b), is amended by deleting "§ 40-32-101" and substituting "title 40, chapter 32".

SECTION 5. Tennessee Code Annotated, Section 16-3-810, is amended by deleting "40-32-101(d)" and substituting "40-32-106(f)".

SECTION 6. Tennessee Code Annotated, Section 16-18-302(a)(3)(C), is amended by deleting "§ 40-32-101(b)" and substituting "§ 40-32-101".

SECTION 7. Tennessee Code Annotated, Section 38-6-118(a)(2), is amended by deleting "40-32-101" and substituting "40-32-106, 40-32-108,".

SECTION 8. Tennessee Code Annotated, Section 38-6-118(d)(2), is amended by deleting "§ 40-32-101(g)(3)" and substituting "§ 40-32-107".

SECTION 9. Tennessee Code Annotated, Section 40-32-102(a), is amended by deleting "§ 40-32-101" and substituting "this chapter".

SECTION 10. Tennessee Code Annotated, Section 40-32-103, is amended by deleting "§ 40-32-101" and substituting "this chapter".

SECTION 11. Tennessee Code Annotated, Section 40-32-105(a), is amended by deleting "§ 40-32-101" and substituting "this chapter to the contrary".

SECTION 12. Tennessee Code Annotated, Section 40-32-105(b)(6)(C)(i), is amended by deleting "§ 40-32-101(g)" and substituting "§ 40-32-107(a)(1)".

SECTION 13. Tennessee Code Annotated, Section 40-35-313(b), is amended by deleting "§ 40-32-101(b)" and substituting "§ 40-32-101" and by deleting "§ 40-32-101(a)(3) - (c)(3)" and substituting "title 40, chapter 32".

SECTION 14. Tennessee Code Annotated, Section 40-35-313(c), is amended by deleting "§ 40-32-101(a)(3) - (c)(3)" and substituting "title 40, chapter 32".

SECTION 15. Tennessee Code Annotated, Section 40-35-324(a)(1), is amended by deleting "§ 40-32-101" and substituting "§ 40-32-108".

SECTION 16. Tennessee Code Annotated, Section 40-35-324(b)(1), is amended by deleting "§ 40-32-101" and substituting "§ 40-32-107".

SECTION 17. Tennessee Code Annotated, Section 40-39-103(f), is amended by deleting "§ 40-32-101" and substituting "title 40, chapter 32".

SECTION 18. Tennessee Code Annotated, Section 40-39-207(a)(2), is amended by deleting "§ 40-32-101, and" and substituting "§ 40-32-108, and" and by deleting "§ 40-32-101, the" and substituting "§ 40-32-107, the".

SECTION 19. Tennessee Code Annotated, Section 40-39-209, is amended by deleting "§ 40-32-101," and substituting "§ 40-32-108," and by deleting "§ 40-32-101." and substituting "§ 40-32-107.".

SECTION 20. Tennessee Code Annotated, Section 55-10-411(c), is amended by deleting "40-32-101(a)(3) - (c)(3)" and substituting "title 40, chapter 32".

SECTION 21. Tennessee Code Annotated, Section 55-50-504, is amended by deleting "40-32-101(a)(3) - (c)(3)" wherever it appears and substituting "title 40, chapter 32".

SECTION 22. This act takes effect upon becoming a law, the public welfare requiring it.