

Amendment No. 1 to HB0193

Curcio
Signature of Sponsor

AMEND Senate Bill No. 577

House Bill No. 193*

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

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 32, is amended by adding the following new section:

40-32-105.

(a) Notwithstanding § 40-32-101, a person may file a petition for expunction of that person's public records involving offenses related to the person's status as a victim of human trafficking.

(b) In order to be eligible for expunction pursuant to this section, the petitioner must meet the following requirements:

(1) At the time of the filing of the petition for expunction at least one (1) year has elapsed since the completion of the sentence imposed for the petitioner's most recent criminal offense;

(2) The petitioner has fulfilled the following requirements of the sentence imposed by any court in which the individual was convicted of an offense:

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

(B) Meeting all conditions of supervised or unsupervised release;

and

(C) If so required by the conditions of any of the sentences 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;

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(3) The petitioner has not been convicted of any criminal offense during the one (1) year prior to filing the petition and is not subject to any pending criminal charges;

(4) At least one (1) of the convictions to be expunged was for prostitution, as prohibited by § 39-13-513;

(5) The petitioner has not had public records previously expunged pursuant to this section;

(6) The convictions to be expunged:

(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 the use or possession of a deadly weapon;

and

(C) Are individually eligible for expunction under § 40-32-101(g);

and

(7) Each of the convictions to be expunged resulted from the petitioner's status as a victim of human trafficking, under § 39-13-314. The petitioner may provide evidence of this requirement by testimony or affidavit. This subdivision (b)(6) does not require a conviction for an offense of which the petitioner was the victim. Any offense to be expunged must have occurred on or after the date on which the petitioner became a victim of human trafficking, as determined by the court.

(c) A person seeking expunction pursuant to this section must petition the court in which the person was most recently convicted of an offense. Upon filing of the petition, the clerk must serve the petition on the district attorneys general for each jurisdiction in which the petitioner has been convicted of an offense that is to be expunged. Not later than sixty (60) days after service of the petition, the district attorneys general may submit recommendations to the court and provide a copy of such recommendations to the petitioner.

(d) Both the petitioner and the district attorneys general may file evidence with the court relating to the petition. If necessary, the court may schedule a hearing for the purpose of taking testimony from the petitioner and any other interested persons. 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.

(e) If the court determines that the petitioner meets the requirements of subsection (b) and that the expunction is in the best interests of justice and public safety, the court shall order the person's records involving convictions resulting from the person's status as a victim of human trafficking expunged.

(f) 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.

(g) The district attorneys general conference shall create, by September 1, 2019, a simple form to enable a lay person to petition the court for expunction under this section.

(h) 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 convictions.

(i)

(1) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this section entitles the petitioner to have all public records of the expunged convictions destroyed in the manner set forth in this section.

(2) An expunction granted pursuant to this section 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 for the expunged offenses. Once the expunction order is granted, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.

(3) A petitioner with respect to whom an order has been granted under this section 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 petitioner for any purpose.

(4) As used in this section, expunction means, in contemplation of law, the conviction for the expunged offenses never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of the criminal offenses that were expunged.

(5) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this section, 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.

(j) The clerk of the court maintaining records expunged pursuant to this section shall keep such records confidential. The records are not public and may 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.

(k) Upon filing the petition, the petitioner shall pay the clerk of court a fee, as described in § 40-32-101(g)(9).

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.