

HB 2681 -- EXPUNGEMENT OF CRIMINAL RECORDS

SPONSOR: Gardner

This bill changes the laws regarding petitions for the expungement of criminal records.

Current law requires a \$100 surcharge to be paid for petitions for expungement of criminal records. This bill raises the amount of the surcharge to \$500 and provides that the judge may waive the surcharge if the petitioner is indigent.

Under current law, a person may petition the court in which the person was found guilty for the expungement of records relating to a list of specified offenses. A person may file multiple petitions throughout the state and have multiple offenses expunged, but may only file one petition per circuit court. This bill repeals the limitation on the number of petitions per circuit court, allows a person who was arrested but not sentenced to apply for expungement, and allows a person to petition, over the course of a lifetime, for the expungement of records for any number of infractions, no more than two misdemeanor offenses or ordinance violations that carry jail time, and no more than one felony offense. If the violations or offenses were charged at the same time or involve the same course of conduct, the person may include all the related offenses or violations in the same petition and it only counts as a petition for one offense or violation. This bill lists certain crimes and ordinance violations that may not be expunged.

Current law requires a person to wait 20 years for a felony and 10 years for a misdemeanor before being eligible to file an expungement petition. This bill allows a person to file a petition after three years for the expungement of records relating to a finding of guilty for a misdemeanor, ordinance violation, or infraction, or an arrest for any type of offense or violation. A petition to expunge a finding of guilt for a felony may be filed five years after completion of the sentence.

Currently, a person may be eligible for an expungement petition even if he or she was subsequently found guilty of a misdemeanor or felony offense of any state vehicle law. This bill prohibits a person from being eligible if he or she has been subsequently found guilty of any misdemeanor or felony offense.

This bill requires the Office of State Courts Administrator to create a form for pro se petitioners seeking expungement, modifies the information that must be contained on any expungement petition, and repeals a provision of current law requiring the court to dismiss a petition if all the required information is not included.

Current law allows a judge to grant a petition for expungement if the circumstances and behavior of the petitioner warrant the expungement is consistent with the public welfare. This bill repeals those provisions and requires the judge to grant an expungement if the prosecutor does not object within 30 days and the petitioner has an eligible offense, has not been found guilty of another offense, has no pending charges, and has met all the conditions of his or her sentence. If the prosecutor does object, the court must hold a hearing within 60 days to determine whether the interests of justice warrant the expungement. There is a presumption that the expungement is warranted if the petitioner meets the criteria.

Current law requires the petitioner to name as defendants any entity that has records related to the offense the petitioner is seeking to have expunged. This bill repeals that requirement and requires the court to provide notice to the office that prosecuted the violations or offenses.

Under current law, entities possessing records relating to an expunged offense must destroy the records. This bill provides that the entities must seal, not destroy, the records.

This bill repeals the provision prohibiting a person, whose petition was dismissed, from refileing another petition for a year after the date of filing the initial petition.

This bill is the same as HB 1555 (2016).