

1 **§61-11-26. Expungement of certain criminal convictions;**
2 **procedures; effect.**

3 (a) Any person convicted of a misdemeanor or felony offense
4 where the court finds that controlled substances addiction was a
5 substantial contributing factor in the person's involvement in the
6 offense or offenses arising from the same transaction committed
7 ~~while he or she was between the ages of eighteen and twenty six,~~
8 ~~inclusive,~~ may, pursuant to ~~the provisions of~~ this section,
9 petition the circuit court in which the conviction or convictions
10 occurred for expungement of the conviction or convictions and the
11 records associated therewith. The clerk of the circuit court shall
12 charge and collect in advance the same fee as is charged for
13 instituting a civil action pursuant to subdivision (1), subsection
14 (a), section eleven, article one, chapter fifty-nine of this code
15 for a petition for expungement.

16 (b) Expungement shall not be available for any conviction of
17 an offense listed in subsection (i) of this section. The relief
18 afforded by this subsection is only available to persons having no
19 other prior or subsequent convictions other than minor traffic
20 violations at the time the petition is filed: *Provided,* That at
21 the time the petition is filed and during the time the petition is
22 pending, petitioner may not be the subject of an arrest or any
23 other pending criminal proceeding. No person shall be eligible for
24 expungement pursuant to ~~the provisions of~~ subsection (a) of this

1 section until one year after the conviction, in the case of a
2 misdemeanor or misdemeanors or three years in the case of a felony
3 or felonies or after completion of any sentence of incarceration or
4 probation, whichever is later in time.

5 (c) Each petition to expunge a conviction or convictions
6 pursuant to this section shall be verified under oath and include
7 the following information:

8 (1) Petitioner's current name and all other legal names or
9 aliases by which petitioner has been known at any time;

10 (2) All of petitioner's addresses from the date of the offense
11 or alleged offense in connection with which an expungement order is
12 sought to date of the petition;

13 (3) Petitioner's date of birth and social security number;

14 (4) Petitioner's date of arrest, the court of jurisdiction and
15 criminal complaint, indictment, summons or case number;

16 (5) The statute or statutes and offense or offenses for which
17 petitioner was charged and of which petitioner was convicted;

18 (6) The names of any victim or victims, or that there were no
19 identifiable victims;

20 (7) Whether there is any current order for restitution,
21 protection, restraining order or other no contact order prohibiting
22 the petitioner from contacting the victims or whether there has
23 ever been a prior order for restitution, protection or restraining
24 order prohibiting the petitioner from contacting the victim. If

1 there is such a current order, petitioner shall attach a copy of
2 that order to his or her petition;

3 (8) The court's disposition of the matter and punishment
4 imposed, if any;

5 (9) Why expungement is sought, such as, but not limited to,
6 employment or licensure purposes, and why it should be granted;

7 (10) The steps the petitioner has taken since the time of the
8 offenses toward personal rehabilitation, including treatment, work
9 or other personal history that demonstrates rehabilitation;

10 (11) Whether petitioner has ever been granted expungement or
11 similar relief regarding a criminal conviction by any court in this
12 state, any other state or by any federal court; and

13 (12) Any supporting documents, sworn statements, affidavits or
14 other information supporting the petition to expunge.

15 (d) A copy of the petition, with any supporting documentation,
16 shall be served by petitioner pursuant to the rules of the trial
17 court upon the superintendent of the State Police; the prosecuting
18 attorney of the county of conviction; the chief of police or other
19 executive head of the municipal police department wherein the
20 offense was committed; the chief law-enforcement officer of any
21 other law-enforcement agency which participated in the arrest of
22 the petitioner; the superintendent or warden of any institution in
23 which the petitioner was confined; the ~~magistrate court or~~
24 ~~municipal~~ court which disposed of the petitioner's criminal charge;

1 and all other state and local government agencies whose records
2 would be affected by the proposed expungement. The prosecutorial
3 office that had jurisdiction over the offense or offenses for which
4 expungement is sought shall serve by first class mail the petition
5 for expungement, accompanying documentation and any proposed
6 expungement order to any identified victims.

7 (e) Upon receipt of a petition for expungement, the
8 superintendent of the State Police; the prosecuting attorney of the
9 county of conviction; the chief of police or other executive head
10 of the municipal police department wherein the offense was
11 committed; the chief law-enforcement officer of any other law-
12 enforcement agency which participated in the arrest of the
13 petitioner; the superintendent or warden of any institution in
14 which the petitioner was confined; the ~~magistrate court or~~
15 ~~municipal~~ court which disposed of the petitioner's criminal charge
16 or charges; all other state and local government agencies whose
17 records would be affected by the proposed expungement and any other
18 interested individual or agency that desires to oppose the
19 expungement shall, within thirty days of receipt of the petition,
20 file a notice of opposition with the court with supporting
21 documentation and sworn statements setting forth the reasons for
22 resisting the petition for expungement. A copy of any notice of
23 opposition with supporting documentation and sworn statements shall
24 be served upon the petitioner in accordance with trial court rules.

1 The petitioner may file a reply no later than ten days after
2 service of any notice of opposition to the petition for
3 expungement.

4 (f) The burden of proof shall be on the petitioner to prove by
5 clear and convincing evidence that: (1) The conviction or
6 convictions for which expungement is sought are the only
7 convictions against petitioner and that the conviction or
8 convictions are not excluded from expungement by subsection ~~(j)~~ (i)
9 of this section; (2) that the requisite time period has passed
10 since the conviction or convictions or end of the completion of any
11 sentence of incarceration or probation; (3) petitioner has no
12 criminal charges pending against him or her; (4) the expungement is
13 consistent with the public welfare; (5) petitioner has, by his or
14 her behavior since the conviction or convictions, evidenced that he
15 or she has been rehabilitated and is law-abiding; and (6) any other
16 matter deemed appropriate or necessary by the court to make a
17 determination regarding the petition for expungement.

18 (g) Within sixty days of the filing of a petition for
19 expungement the circuit court shall:

20 (1) Summarily grant the petition;

21 (2) Set the matter for hearing; or

22 (3) Summarily deny the petition if the court determines that
23 the petition is insufficient or, based upon supporting
24 documentation and sworn statements filed in opposition to the

1 petition, the court determines that the petitioner, as a matter of
2 law, is not entitled to expungement.

3 (h) If the court sets the matter for hearing, all interested
4 parties who have filed a notice of opposition shall be notified.
5 At the hearing, the court may inquire into the background of the
6 petitioner and shall have access to any reports or records relating
7 to the petitioner that are on file with any law-enforcement
8 authority, the institution of confinement, if any, and parole
9 authority or other agency which was in any way involved with the
10 petitioner's arrest, conviction, sentence and post-conviction
11 supervision, including any record of arrest or conviction in any
12 other state or federal court. The court may hear testimony of
13 witnesses and any other matter the court deems proper and relevant
14 to its determination regarding the petition. The court shall enter
15 an order reflecting its ruling on the petition for expungement with
16 appropriate findings of fact and conclusions of law.

17 (i) No person ~~shall be~~ is eligible for expungement of a
18 conviction and the records associated therewith pursuant to ~~the~~
19 ~~provisions of~~ subsection (a) of this section for any felony crime
20 of violence against the person, any violation involving the
21 infliction of serious physical injury ~~involving the provisions of~~
22 or any felony or misdemeanor violation of article eight-b of this
23 chapter where the petitioner was eighteen years old, or older, at
24 the time the violation occurred and the victim was twelve years of

1 age, or younger, at the time the violation occurred; any offense
2 involving the use or exhibition of a deadly weapon or dangerous
3 instrument; ~~of the provisions of~~ any violation of article three-e,
4 eight, eight-c or eight-d of this chapter or subsection (b) or (c),
5 section nine, article two of this chapter where the victim was a
6 spouse, a person with whom the person seeking expungement had a
7 child in common or with whom the person seeking expungement ever
8 cohabitated prior to the offense; any violation of ~~the provisions~~
9 ~~of~~ section twenty-eight of said article; a conviction for driving
10 under the influence of alcohol, controlled substances or a
11 conviction for a violation of section three, article four, chapter
12 seventeen-b of this code or section nineteen, article eight of this
13 chapter.

14 (j) If the court grants the petition for expungement, it shall
15 order the sealing of all records in the custody of the court and
16 expungement of any records in the custody of any other agency or
17 official, including law-enforcement records. Every agency with
18 records relating to the arrest, charge or other matters arising out
19 of the arrest or conviction that is ordered to expunge records
20 shall certify to the court within sixty days of the entry of the
21 expungement order that the required expungement has been completed.
22 All orders enforcing the expungement procedure shall also be
23 sealed. For the purposes of this section, "records" do not include
24 the records of the Governor, the Legislature or the Secretary of

1 State that pertain to a grant of pardon. Such records that pertain
2 to a grant of pardon are not subject to an order of expungement.
3 The amendment to this section during the fourth extraordinary
4 session of the Legislature in the year 2009 is not for the purpose
5 of changing existing law, but is intended to clarify the intent of
6 the Legislature as to existing law regarding expungement.

7 (k) Upon expungement, the proceedings in the matter shall be
8 deemed never to have occurred. The court and other agencies shall
9 reply to any inquiry that no record exists on the matter. The
10 person whose record is expunged shall not have to disclose the fact
11 of the record or any matter relating thereto on an application for
12 employment, credit or other type of application.

13 (l) Inspection of the sealed records in the court's possession
14 may thereafter be permitted by the court only upon a motion by the
15 person who is the subject of the records or upon a petition filed
16 by a prosecuting attorney that inspection and possible use of the
17 records in question are necessary to the investigation or
18 prosecution of a crime in this state or another jurisdiction. If
19 the court finds that the interests of justice will be served by
20 granting a petition to inspect the sealed record, it may be
21 granted.

NOTE: The purpose of this bill is to permit and prohibit the
expungement of certain criminal convictions. The bill permits
expungement of felony offenses involving controlled substances.

The bill prohibits the expungement of convictions involving violence against the person, certain sexual offenses, crimes against chastity, morality and decency, the filming of sexually explicit conduct of minors, child abuse and offenses involving explosives. The bill also increases the amount of time after conviction of a felony before expungement may be sought.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.