

TITLE 12. CRIMINAL PROCEDURE
CHAPTER 1.3. EXPUNGEMENT OF CRIMINAL RECORDS

§ 12-1.3-1. Definitions

For purposes of this chapter only, the following definitions apply:

(1) “Crime of violence” includes murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

(2) “Expungement of records and records of conviction” means the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation.

(3) “First offender” means a person who has been convicted of a felony offense or a misdemeanor offense, and who has not been previously convicted of or placed on probation for a felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.

(4) “Law enforcement agency” means a state police organization of this or any other state, the enforcement division of the department of environmental management, the office of the state fire marshal, the capitol police, a law enforcement agency of the federal government, and any agency, department, or bureau of the United States government which has as one of its functions the gathering of intelligence data.

(5) “Records” and “records of conviction and/or probation” include all court records, all records in the possession of any state or local police department, the bureau of criminal identification and the probation department, including, but not limited to, any fingerprints, photographs, physical measurements, or other records of identification. The terms “records” and “records of conviction, and/or probation” do not include the records and files of the department of attorney general which are not kept by the bureau of criminal identification in the ordinary course of the bureau’s business.

§ 12-1.3-2. Motion for expungement

(a) Any person who is a first offender may file a motion for the expungement of all records and records of conviction for a felony or misdemeanor by filing a motion in the court in which the conviction took place; provided, that no person who has been convicted of a crime of violence shall have his or her records and records of conviction expunged; and provided, that all outstanding court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary obligations have been paid, unless such amounts are reduced or waived by order of the court.

(b) Notwithstanding § 12-1.3-1(3) (“first offender”), any person who has been convicted of more than one misdemeanor, but fewer than six (6) misdemeanors, and has not been convicted of a felony may file a motion for the expungement of any or all of those misdemeanors by filing a motion in the court in which the convictions took place; provided that convictions for offenses under chapter 29 of title 12, §§ 31-27-2 or 31-27-2.1 are not eligible for and may not be expunged under this subsection.

(c) Subject to subsection (a), a person may file a motion for the expungement of records relating to a misdemeanor conviction after five (5) years from the date of the completion of his or her sentence.

(d) Subject to subsection (a), a person may file a motion for the expungement of records relating to a felony conviction after ten (10) years from the date of the completion of his or her sentence.

(e) Subject to § 12-19-19(c), and without regard to subsections (a) through (c) of this section, a person may file a motion for the expungement of records relating to a deferred sentence upon its completion, after which the court will hold a hearing on the motion.

(f) Subject to subsection (b) of this section, a person may file a motion for the expungement of records relating to misdemeanor convictions after ten (10) years from the date of the completion of their last sentence.

§ 12-1.3-3. Motion for expungement – Notice – Hearing – Criteria for granting

(a) Any person filing a motion for expungement of the records of his or her conviction pursuant to § 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney general and the police department that originally brought the charge against the person at least ten (10) days prior to that date.

(b) The court, after the hearing at which all relevant testimony and information shall be considered, may, in its discretion, order the expungement of the records of conviction of the person filing the motion if it finds:

(1)(i) That in the five (5) years preceding the filing of the motion, if the conviction was for a misdemeanor, or in the ten (10) years preceding the filing of the motion, if the conviction was for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor; there are no criminal proceedings pending against the person; that the person does not owe any outstanding court-imposed or court-related fees, fines, costs, assessments, or charges, unless such amounts are reduced or waived by order of the court, and he or she has exhibited good moral character;

(ii) That after a hearing held under the provisions of § 12-19-19(c), the court finds that the person has complied with all of the terms and conditions of the deferral agreement including, but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and restitution to victims of crimes; there are no

criminal proceedings pending against the person; and he or she has established good moral character. Provided, that no person who has been convicted of a crime of violence shall have their records relating to a deferred sentence expunged; or

(iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ten (10) years preceding the filing of the motion, if the convictions were for multiple misdemeanors, the petitioner has not been convicted nor arrested for any felony or misdemeanor; there are no criminal proceedings pending against the person; and they have exhibited good moral character; and, provided that convictions for offenses under chapter 29 of title 12, §§ 31-27-2 or 31-27-2.1 are not eligible and may not be expunged under this subsection.

(2) That the petitioner's rehabilitation has been attained to the court's satisfaction and the expungement of the records of his or her conviction is consistent with the public interest.

(c) If the court grants the motion, it shall, after payment by the petitioner of a one hundred dollar (\$100) fee to be paid to the court, order all records and records of conviction relating to the conviction expunged and all index and other references to it removed from public inspection. A copy of the order of the court shall be sent to any law enforcement agency and other agency known by either the petitioner, the department of the attorney general, or the court to have possession of the records. Compliance with the order shall be according to the terms specified by the court.

(d) The defendant shall be advised at the hearing that any and all bail money relating to a case that remains on deposit and is not claimed at the time of expungement shall be escheated to the state's general treasury in accordance with chapter 12 of title 8.

§ 12-1.3-4. Effect of expungement of records - Access to expunged records - Wrongful disclosure

(a) Any person having his or her record expunged shall be released from all penalties and disabilities resulting from the crime of which he or she had been convicted, except, upon conviction of any subsequent crime, the expunged conviction may be considered as a prior conviction in determining the sentence to be imposed.

(b) In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this chapter may state that he or she has never been convicted of the crime; provided, that if the person is an applicant for a law enforcement agency position, for admission to the bar of any court, an applicant for a teaching certificate, under chapter 11 of title 16, a coaching certificate under § 16-11.1-1, or the operator or employee of an early childhood education facility pursuant to chapter 48.1 of title 16, the person shall disclose the fact of a conviction.

(c) Whenever the records of any conviction and/or probation of an individual for the commission of a crime have been expunged under the provisions of this chapter, any custodian of the records of conviction relating to that crime shall not disclose the existence of the records upon inquiry from any source unless the inquiry is that of the individual whose record was expunged,

that of a sentencing court following the conviction of the individual for the commission of a crime, or that of a bar admission, character and fitness, or disciplinary committee, board, or agency, or court which is considering a bar admission, character and fitness, or disciplinary matter, or that of the commissioner of elementary and secondary education, or that of any law enforcement agency when the nature and character of the offense with which an individual is to be charged would be affected by virtue of the person having been previously convicted of the same offense.

(d) The custodian of any records which have been expunged pursuant to the provisions of this chapter shall only release or allow access to those records for the purposes specified in subsections (b) or (c) of this section or by order of a court. Any agency and/or person who willfully refuses to carry out the expungement of the records of conviction pursuant to § 12-1.3-2, or this section or willfully releases or willfully allows access to records of conviction, knowing them to have been expunged, shall be civilly liable.