

## SUMMARY OF IMPACT OF S. 133 (2015 S.C. ACT NO. 22, EFFECTIVE DATE JUNE 1, 2015) ON THE EXPUNGEMENT OF RECORDS & THE EXPUNGEMENT OF JUVENILE RECORDS

### Expungement of Records

Amended §17-22-910(A) to provide that a person's eligibility for expungement, including a juvenile's under §63-19-2050, or eligibility for expungement as authorized by any other provision of law, must be based on the offense that the person actually pled guilty to or was convicted of committing. Eligibility for expungement may not be based on an offense for which the person may have been charged.

### Expungement of Juvenile Records

Amended §63-19-2050 to provide:

A. Judicial notice to person adjudicated.

At the time a person is adjudicated delinquent, the family court must notify the person of: (a) the ability to have the record expunged; (b) the conditions that must be met to expunge records; and (c) the process for receiving an expungement in that jurisdiction.

B. Petition for expungement.

A person taken into custody for, charged with, or adjudicated delinquent for committing a status offense, or a nonviolent offense as defined in §16-1-70, may petition for expungement. However, a person with a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed as an adult may not petition for expungement. For purposes of this section, a "prior adjudication" is an adjudication occurring prior to the date the subsequent offense was committed.

C. The prosecution or law enforcement may file an objection to the expungement.

- (1) The only available grounds for objection are that the person has other charges pending, or the charges are not eligible for expungement.
- (2) The prosecution or law enforcement must give written notice of the objection to the person at the most current address on file with the court or through the person's counsel of record.
- (3) Once the objection is made, the court must hold a hearing.

D. In order to grant an order of expungement for a person who has been taken into custody for, charged with, or adjudicated delinquent, the court must make the following findings.

- (1) The person is at least 17 years of age,
- (2) The person has successfully completed any dispositional sentence,
- (3) The person has not been subsequently adjudicated for or convicted of any criminal offense, and
- (4) The person does not have any criminal charges pending in family or general sessions court.

E. When a person is found not guilty of a charge, the court must grant an expungement order. The expungement order must be granted regardless of the person's age, and no fee may be charged. *NOTE: Fees for expungement of adjudications and for diversion programs still apply.*

F. Which offenses must/may/may not be expunged by the court.

- (1) An adjudication for a violent crime as defined in §16-1-60 **may not** be expunged.
- (2) A single status offense **must** be expunged.
- (3) Multiple status offenses **may** be expunged.
- (4) Nonviolent crimes as defined in §16-1-70 **may** be expunged.

G. When expungement is authorized, the following official records may be expunged.

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| (1) identity of person taken into custody, | (3) the adjudication, and |
| (2) the charges filed against the person,  | (4) the disposition.      |

H. When an expungement order is granted by the court, the records must be destroyed or retained by law enforcement, government agencies, or departments pursuant to §17-1-40.

I. Legal effect of expungement.

- (1) The person is restored in the contemplation of the law to the status the person occupied before being taken into custody.
- (2) Person is not guilty of perjury or otherwise giving false statement by reason of failing to recite or acknowledge the charge or adjudication in response to an inquiry made of the person for any purpose.