

SB 311-FN - AS AMENDED BY THE SENATE

03/14/2019 0796s

2019 SESSION

19-0881

04/01

SENATE BILL **311-FN**

AN ACT relative to annulment of criminal records.

SPONSORS: Sen. Hennessey, Dist 5; Sen. Fuller Clark, Dist 21; Sen. Feltes, Dist 15; Rep. Rodd, Merr. 6

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill provides for annulment of a criminal record without payment of a fee in certain cases, specifies the waiting period for annulment in cases involving domestic violence offenses, certain first-time offenses, or the defendant was under 20 years of age at the time of a drug-related offense. The bill also reduces the waiting period for annulment of a conviction for driving or operating under the influence of a controlled drug or intoxicating liquor.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/14/2019 0796s 19-0881

04/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to annulment of criminal records.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Annulment of Criminal Records. Amend RSA 651:5, II and the introductory paragraph in RSA 651:5, II-a to read as follows:

II. For an offense disposed of before January 1, 2019 and any offense not subject to paragraph II-a, any person whose arrest has resulted in a finding of not guilty, or whose case was dismissed or not prosecuted, may petition for annulment of the arrest record or court record, or both, at any time, ***without payment of a fee***, in accordance with the provisions of this section. Any person who was convicted of a criminal offense whose conviction was subsequently vacated by a court may petition for annulment of the arrest record or court record, or both, in accordance with the provisions of this section. Nothing in this paragraph shall limit the provisions of subparagraph XI(b).

II-a.(a) For an offense disposed of on or after January 1, 2019, any person whose arrest has resulted in a finding of not guilty on all charges that resulted from the arrest, or whose case was dismissed or not prosecuted, shall have the arrest record and court record annulled ***without payment of a fee***:

2 New Paragraphs; Annulment of Criminal Records. Amend RSA 651:5 by inserting after paragraph III the following new paragraphs:

III-a. A person who was less than 25 years of age at the time of the commission of any drug-related crime for which he or she was convicted may petition for annulment of the record of arrest, conviction, and sentence pursuant to this section or when the person reaches 23 years of age, whichever is earlier. This paragraph shall not apply to the conviction for an offense listed in paragraph V.

III-b. Without relieving any requirement to pay restitution, no period of time in paragraph III shall be extended because of unmet restitution payments if a petitioner demonstrates that he or she is indigent. The court shall keep the petitioner's docket open for

purposes of restitution payments.

3 New Subparagraph; Annulment of Criminal Records. Amend RSA 651:5, XIII by inserting after subparagraph (h) the following new subparagraph:

(i) Felonious domestic violence under RSA 631:2-b.

4 Annulment of Criminal Records. Amend RSA 651:5, III(c)-(i) to read as follows:

(c) For a class A misdemeanor except as provided in subparagraphs (f) ~~[and]~~, (i), **(j), and (k)**, 3 years.

(d) For a class B felony except as provided in subparagraphs (g) ~~[and (i)]~~, **(h), (j), and (k)**, 5 years.

(e) For a class A felony, except as provided in ~~[subparagraph (i)]~~ **subparagraphs (j) and (k)**, 10 years.

(f) For sexual assault under RSA 632-A:4, 10 years.

(g) For felony indecent exposure or lewdness under RSA 645:1, II, 10 years.

~~(h)(1) [For any misdemeanor where the victim was, at the time of the offense, a family or household member or intimate partner as those terms are defined in RSA 173-B:1, 3 years.]~~ **For any misdemeanor not charged as a domestic violence crime where the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, 3 years.**

(2) For any second degree assault pursuant to RSA 631:2 where the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, 10 years.

(i) For any domestic violence misdemeanor under RSA 631:2-b, 10 years.

(j) For a class A misdemeanor or felony offense under RSA 318-B:26, II, 2 years.

(k) For any first-time class A misdemeanor or any felony offense under RSA 318-B:26, II, upon completion of the terms and conditions of the sentence.

5 Driving or Operating Under the Influence of Drugs or Liquor; Annulment. Amend RSA 265-A:21, I to read as follows:

I. Notwithstanding the provisions of RSA 651:5, no court shall order an annulment of any record of conviction of driving or attempting to drive a vehicle upon any way or driving, operating, attempting to operate, or being in actual physical control of an OHRV or operating or attempting to operate a boat on the waters of this state while under the influence of intoxicating liquor or any controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive or while having an alcohol concentration of 0.08 or more or of aggravated drunken driving until ~~[40]~~ **at least 3** years after the date of conviction. Any record ~~[has]~~ **pursuant to this section** shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense under RSA 265-A:3.

6 Effective Date. This act shall take effect 60 days after its passage.

LBAO

19-0881

Amended 4/5/19

SB 311-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2019-0796s)

AN ACT relative to annulment of criminal records.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Criminal Records			

METHODOLOGY:

This bill provides for annulment of a criminal record without payment of a fee in certain cases as well as specifies the waiting period for annulment in cases involving domestic violence offenses, certain first-time offenses, or the defendant was under the age

of 25 at the time of the offense. The bill also reduces the waiting period for annulment of a conviction for driving or operating under the influence from 10 years to 3 years.

The Department of Safety assumes to the extent criminal record annulments without a fee increase, it will result in an indeterminable decrease to revenue. The bill may also result in increased workloads for the Department's existing resources.

AGENCIES CONTACTED:

Department of Safety