

What is an Expungment?

Black's Law Dictionary defines "expungment of record" (also known as an expunction) as the "Process by which record of criminal conviction is destroyed or sealed from the state or Federal repository." In Tennessee, an expungment entitles the person seeking an expungment (the petitioner) to have all public records of the expunged arrest record, charge, or sometimes conviction destroyed in the manner set forth under the Statute.

Further an expungment under several sections of the statute (subsections (g) or (h)) means, in contemplation of law, that the conviction (or charged offense) for the expunged never occurred and the person should not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged. (See generally Tenn. Code Ann. Section 40-32-101(g)(15)(D))

Why is an Expungment Important?

An expungment can potentially:

- Help you obtain employment or advance in your current career
- Help you in obtaining loans
- Help you obtain housing
- Help you obtain professional licensing
- Help you join various professional organizations
- Help you access various government services
- Help you move on from an unfortunate chapter of your life

What records cannot be Expunged under Tennessee Law?

THIS FLOW CHART IS ONLY USEFUL IF YOU HAVE A TENNESSEE ARREST RECORD or CHARGE.

Contact the Bar Association for the State in which you were charged and ask about expungement referrals. If you live in Maryland you could also start by checking : www.expungmaryland.org

When an expungement is granted most public records are destroyed, but many are not including:

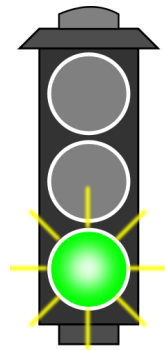
- Arrest histories, investigative reports, intelligence information of law enforcement agencies,
- Files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public
- Appellate court records or appellate court opinions. (See Tenn. Code Ann. Section 40-32-101(b)(2)).
- Records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes.

However, the department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law. (See Tenn. Code Ann. Section 40-32-101(b)(1)).

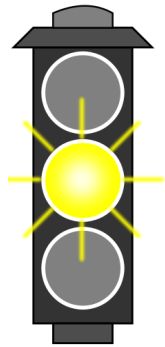
AND

Whenever an order of expunction issues under this section directed to the department of children's services or department of human services, the department shall notify the defendant if there are records required to be maintained as directed above

Legend



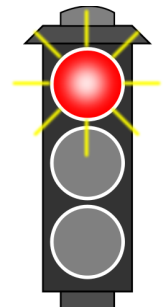
You may be eligible for an expungement.



You should consult an Attorney to determine if your conviction is eligible for expungement.



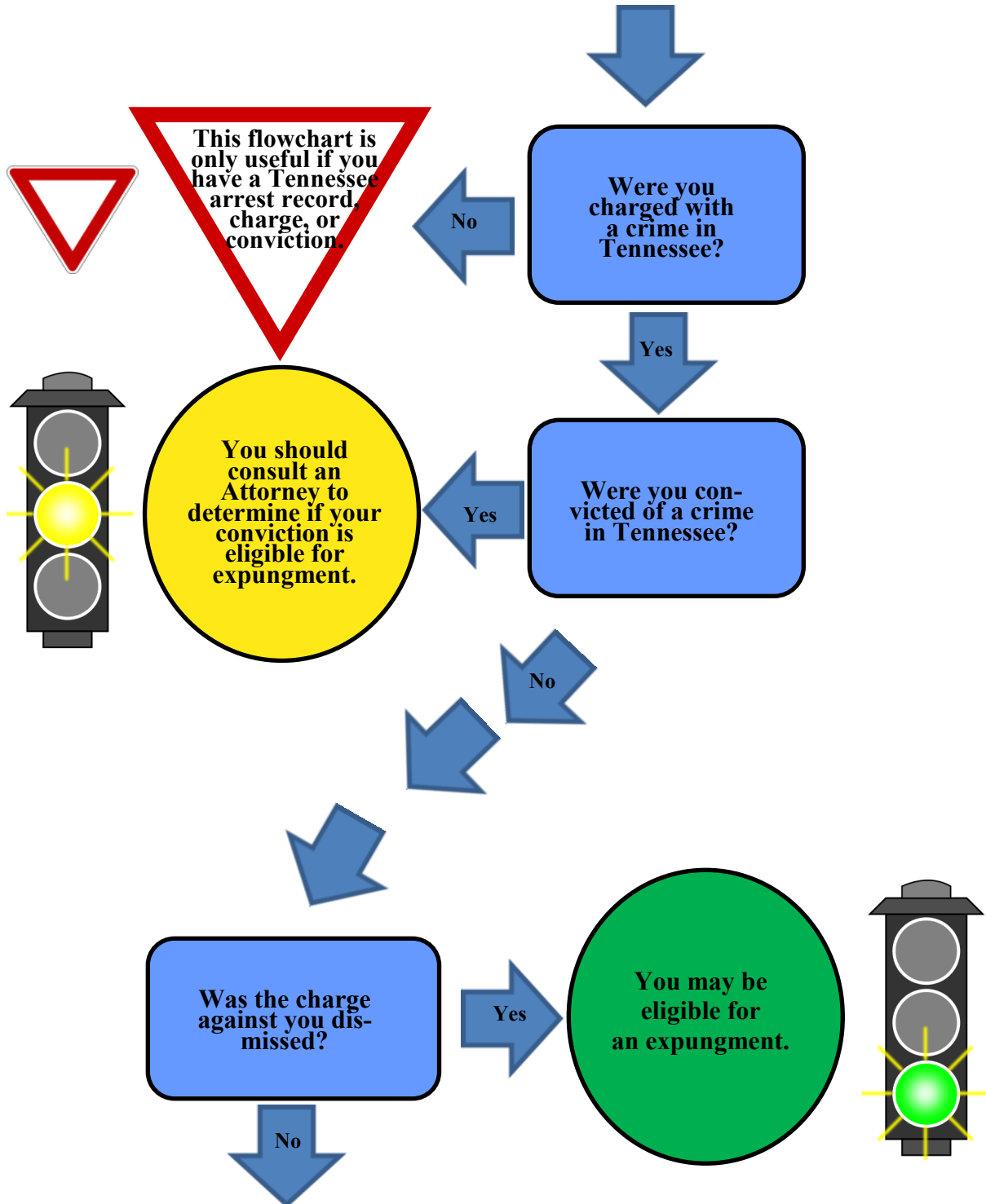
This flowchart is only useful if you have a Tennessee arrest record, charge, or conviction.

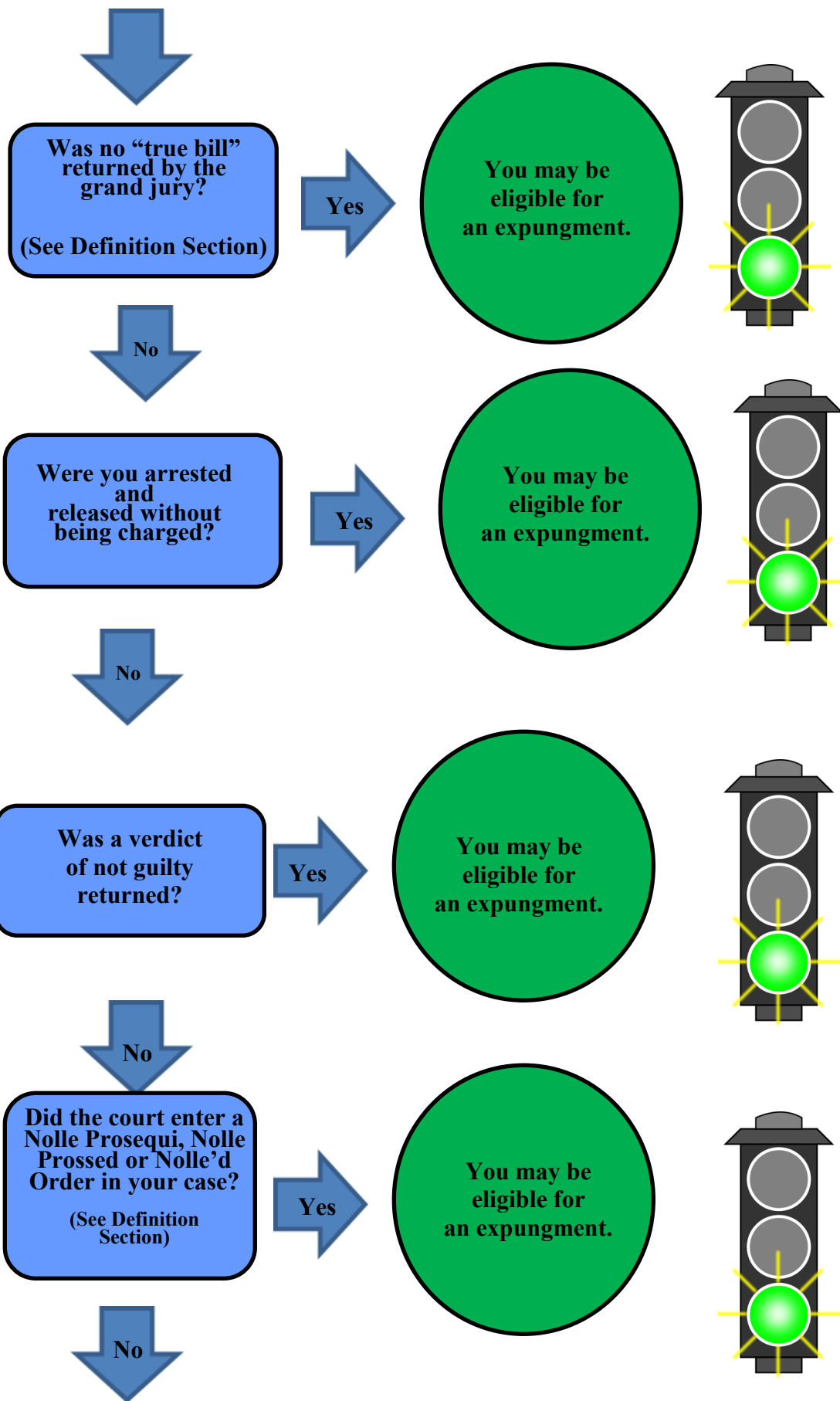


Presently you are not eligible for an expungement

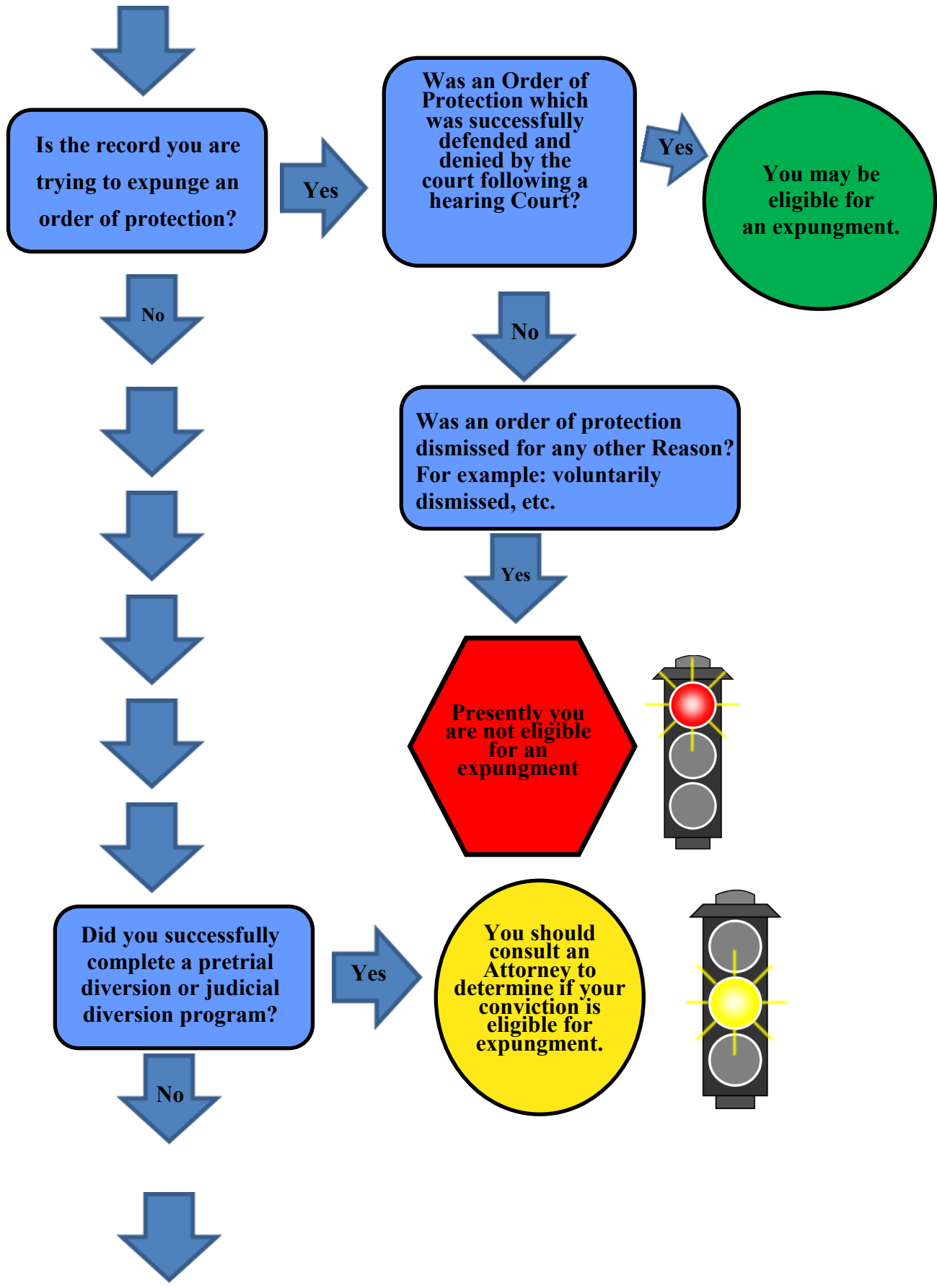
DISCLAIMER

This flow chart is intended to help clarify expungement in **Tennessee** and **does not serve as a substitute for legal advice**. It is a very good idea to speak to a lawyer if you have questions about your criminal record and are unsure of how to answer any of the questions in this flow chart. Using this flow chart does not create an attorney-client relationship.

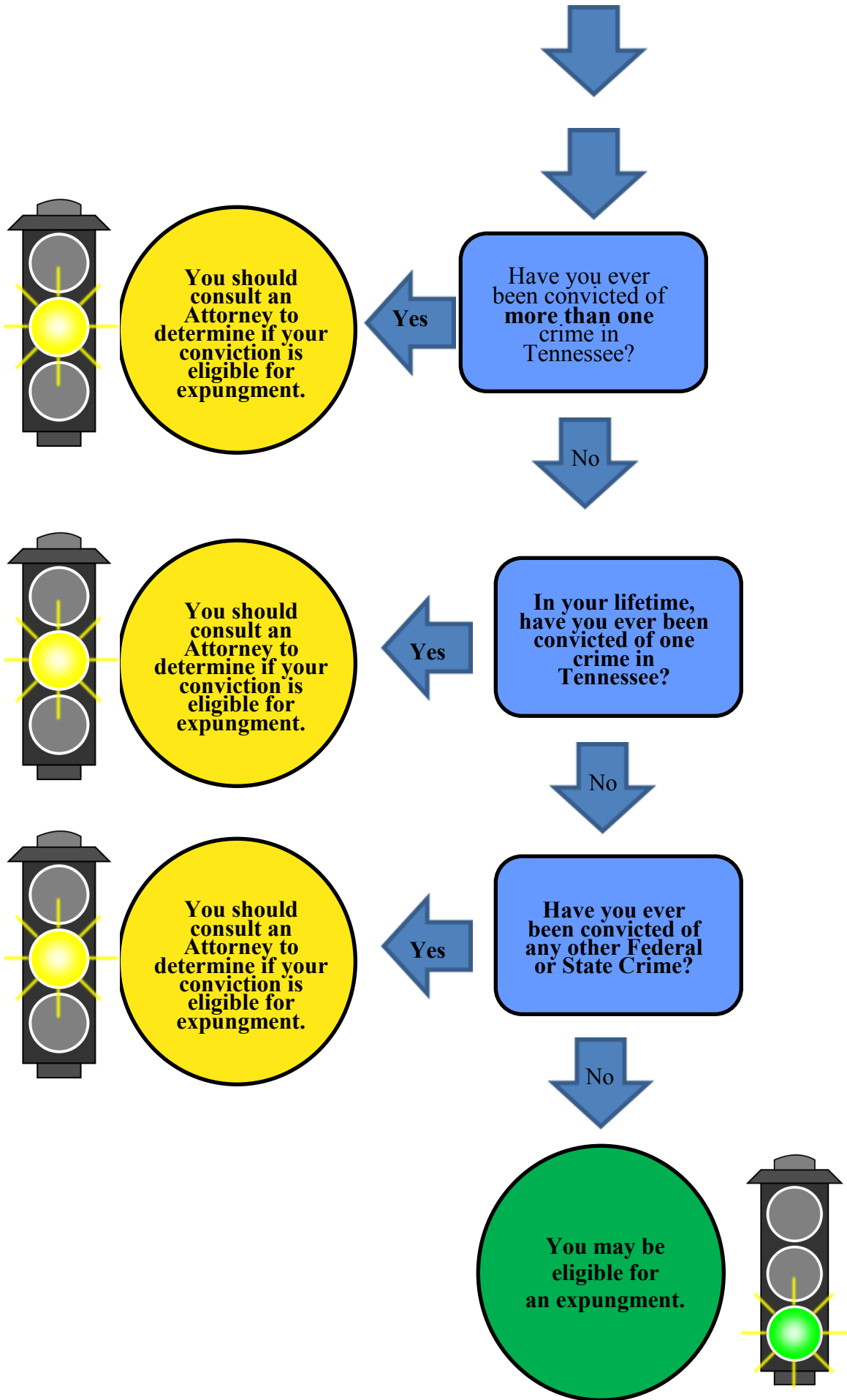


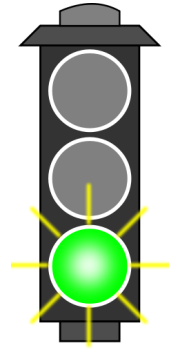
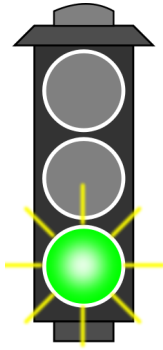


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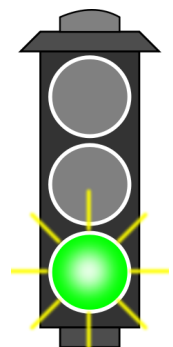
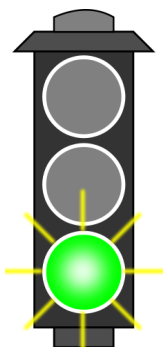
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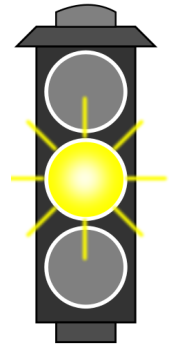
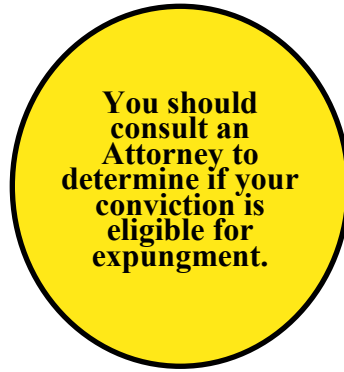
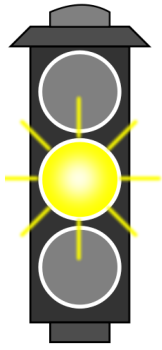




Determining that you may be eligible for an expungement is an important first step. Some Counties in Tennessee offer free clinics and screens to help people with expunging records. Contact any of the resources below for more information on obtaining an expungement:

- **Knoxville Bar Associations Lawyer Referral and Information Service**
865-522-6522
- **Legal Aid of East Tennessee**
865-637-0484
- **The Legal Clinic of the University of Tennessee College of Law**
865-974-2331
- **Additional resources are available at: www.onlinetnjustice.org**





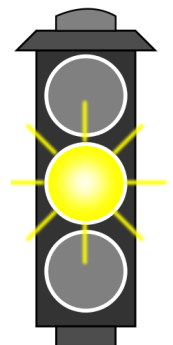
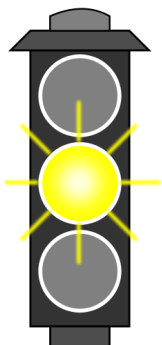
Tennessee's Expungement Law is complex and changes frequently. You may be eligible for an expungement, but more specific facts and questions must be asked to determine whether you are eligible for an expungement. Currently certain convictions are now expugnable if certain specific circumstances are met under Tenn. Code Ann. Section 40-32-101(g). There is an expugnable convictions checklist provided by the Tennessee District Attorneys General Conference available online at:

<http://www.tndagc.com/expunge/>

We suggest that you consult with an attorney or one of the legal resources identified below and discuss expungement of a successfully completed diversion or conviction because the court denies your petition for expungement, then you "may not file another such petition until at least two (2) years from the date of the denial" under Tenn. Code. Ann. Section 40-32-101(g)(6).

Fortunately there are many fantastic Attorneys and Legal Resources available to you. Contact any of the resources below to determine if you are be eligible for an expungement:

- **Knoxville Bar Associations Lawyer Referral and Information Service
865-522-6522**
- **Legal Aid of East Tennessee
865-637-0484**
- **The Legal Clinic of the University of Tennessee College of Law
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Definitions

- **True Bill** means a bill of indictment (charge) found by a grand jury supported by sufficient evidence to justify the hearing of a case.

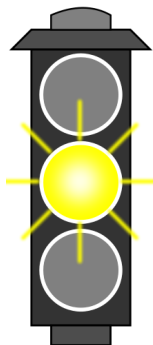
Further Discussion of the term True Bill:

When no “true bill” has been found in your case that means the charge or allegations are not supported by sufficient evidence to justify an indictment by the grand jury that could lead to a trial and a conviction, a dismissal, or a plea of guilty.

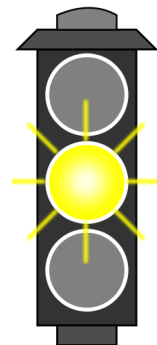
- **Nolle Prosequi** means the District Attorney (State) will no longer seek to prosecute the case against you. Your attorney might have told you that the charges against you were “nolle’d” or have been “nolle prossed.”

Further discussion of the term Nolle Prosequi:

The term Nolle Prosequi means “will not prosecute” in Latin and is a reference that the District Attorney’s Office wishes to discontinue the prosecution of a charge.



Legal Terminology is Complex.
Consulting an Attorney is a valuable part of understanding the law.
(See the previous page for some great Resources.)



STEPS TO COMPLETE EXPUNCTION PROCESS:

1. If you are seeking an expunction of your record, you must obtain and complete a checklist prepared by the district attorney's office **where the conviction occurred**.
2. You will be required to obtain all of the documents and records in the checklist and submit them to the district attorney where you obtained the checklist.
3. Once the district attorney is satisfied that you have supplied all of the required information, the district attorney will provide you with a petition to submit to the court clerk **where the conviction occurred**. (Note: The district attorney may tell you that you do not qualify for expunction. You are still entitled to file the petition with the court. **However**, the district attorney will likely oppose your request.)
4. Upon filing the petition with the court clerk, you will be required to pay the required **\$350.00** fee. The clerk may add an additional **\$100.00** fee for the expunction process. **THESE FEES ARE NOT REFUNDABLE**.
5. If you are unable to pay all the fees at once, you may be able to establish a payment plan with clerk of the court. The record will not be expunged until all payments have been made.
6. Within 60 days of filing the petition, the district attorney may submit recommendations to the court. The district attorney is required to provide a copy of the recommendations to you. During this 60 day time period, each party may submit evidence to the court in support of the case.
7. If the court **denies** the application, you may **not** file another application for expunction for at least **two (2) years from the date of the denial**.

If your request is **granted**, you will be entitled to a copy of the order of expunction and this copy will be sufficient proof that you are no longer under any disability, disqualification or other adverse consequence resulting from the conviction that has been expunged.

The district public defender of each judicial district is required to conduct an educational program each year, providing information and assistance with the general eligibility requirements and the process established by law for obtaining an expunction.

For a more complete explanation of the offenses listed in this document, please see the Tennessee Code Annotated at the following website. Viewing of the Tennessee Code at this web site is a free service.

<http://www.lexisnexis.com/hottopics/tncode>

A list of district attorney offices may be obtained at the following web site.

<http://www.tndagc.com/dir.htm>

The Tennessee District Public Defender is providing information to help individuals learn about legal issues. The information in this document is NOT legal advice, but given for legal education only. Legal education is not the same as legal advice, which is the application of law to an individual's specific circumstances. The information in this document is NOT a substitute for and does NOT replace the advice or representation of a licensed attorney. It is recommended that you consult with a licensed attorney if you want assurance that the information in this document and your interpretation of it are appropriate for your particular situation. **YOU SHOULD NOT AND ARE NOT AUTHORIZED TO RELY ON THIS DOCUMENT AS A SOURCE OF LEGAL ADVICE.**

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EXPUNCTION OF A CRIMINAL RECORD UNDER T.C.A. § 40-32-101

The information provided in this brochure pertains only to the requirements of subsection (g) and (h) of T.C.A. §40-32-101. The information does NOT apply to diversion programs. If you completed of a diversion program, you should contact the attorney that represented you for further assistance.

ELIGIBILITY: Subsection (g)

Under subsection (g), a person's record may be expunged if they have never been convicted of any other criminal offenses. This includes federal offenses and offenses in other states. This does not include the offense for which one is seeking an expunction. The offense must be an eligible Class E felony, or a misdemeanor not listed in this document.

Additionally, a person's prior conviction involving multiple offenses may be expunged if the conduct leading to the conviction occurred:
-contemporaneously,
-at the same location,
-was a single continuous criminal episode, and
-all of the offenses were eligible individually.

Moving and non-moving traffic offenses are not considered an "offense" for the purposes of subsection (g).

IN ADDITION TO THE ABOVE

At the time of the filing, **at least 5 years have elapsed** since the completion of the sentence imposed for the offense; **AND**

You have **fulfilled ALL of the requirements of the sentence imposed** for which you were convicted, including:

- Payment of all fines, restitution, court costs and other assessments;
- Completion of any term of imprisonment or probation;
- Meeting all conditions of supervised or unsupervised release; **AND**
- If required by the conditions of the sentence, remaining free from dependency on or abuse of alcohol, or a controlled substance or other prohibited substance for a period of not less than one year.

ALL of the above conditions must be met to be eligible.

ELIGIBILITY: Subsection (h)

Under subsection (h), if a person has been convicted of a non-violent crime after January 1, 1980, received a positive vote from the parole board to receive a pardon, and received a pardon from the Governor of Tennessee, a person's record may be expunged.

CLASS E FELONIES ELIGIBLE FOR EXPUNCTION

(If you were convicted of one of the felonies listed below and sentenced to imprisonment of 3 years or less and the offense was committed on or after November 1, 1989):

39-11-411 Accessory after the fact;
39-13-306 Custodial interference where person not voluntarily returned by defendant;
39-13-604(c)(2) Knowing dissemination of illegally recorded cellular communication;
39-14-105(2) Theft (\$501-\$999);
39-14-114(c) Forgery (up to \$1,000);
39-14-115 Criminal simulation (up to \$1,000);
39-14-116(c) Hindering secured creditors;
39-14-117(b) Fraud in insolvency;
39-14-118 Fraudulent use of credit or debit card (\$501-\$999);
39-14-121 Worthless checks (\$501-\$999);
39-14-130 Destruction of valuable papers (\$501-\$999);
39-14-131 Destruction or concealment of will;
39-14-133 Fraudulent or false insurance claim (\$501-\$999);
39-14-137(b) Fraudulent qualifying for set aside programs (\$501-\$999);
39-14-138 Theft of trade secrets (\$501-\$999);
39-14-139 Sale of recorded live performances without consent (\$501-\$999);
39-14-143 Unauthorized solicitation for police, judicial or safety associations;
39-14-147(f) Fraudulent transfer of motor vehicle with value of less than \$20,000;
39-14-149 Communication theft (\$501-\$999 (fine only));
39-14-153 Home improvement fraud (\$500-\$1,000);
39-14-402 Burglary of an auto;
39-14-408 Vandalism (\$501-\$999);
39-14-411 Utility service interruption or property damage;
39-14-505 Aggravated criminal littering (2nd & 3rd offenses involving certain weight or volume);
39-14-602 Violation of Tennessee Personal And Commercial Computer Act (\$501-\$999);
39-14-603 Unsolicited bulk electronic mail (\$500-\$999);
39-16-201 Taking telecommunication device into penal institution;
39-16-302 Impersonation of licensed professional;
39-16-603 Evading arrest in motor vehicle where no risk to bystanders;
39-16-609(e) Failure to appear (felony);
39-17-106 Gifts of adulterated candy or food;
39-17-417(f) Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000);
39-17-417(g)(1) Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI drug marijuana (fine not greater than \$2,500);
39-17-417(h) Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000);
39-17-418(e) Simple possession or casual exchange (3rd offense);
39-17-422(c) Selling glue for unlawful purpose;
39-17-423(c) Counterfeit controlled substance;
39-17-425(b)(1-3) Unlawful drug paraphernalia uses and activities;

CLASS D FELONY ELIGIBLE FOR EXPUNCTION

(If convicted on or after November 1, 1989, and sentenced for a term of 4 years or less, and it has been at least 10 years since completion of your sentence):

53-11-402(a)(3) Drug fraud

MISDEMEANORS NOT ELIGIBLE FOR EXPUNCTION:

(All other misdemeanors committed on or after November 1, 1989 are eligible for expunction)

39-13-101(a)(1) & (2) Assault;
39-13-102 Aggravated assault of public employee;
39-13-111 Domestic assault;
39-13-113(g) Violation of protective or restraining order;
39-13-113(h) Possession of firearm while order of protection in effect;
39-13-511 Public indecency 3rd or subsequent offense;
39-13-511 Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;
39-13-526(b)(1)(2) Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;
39-13-528 Soliciting minor to engage in Class E sexual offense;
39-13-533 Unlawful sexual contact by authority figure;
39-14-118 Fraudulent use of credit/debit card (up to \$500);
39-14-304 Reckless burning;
39-14-406 Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;
39-15-201(b)(3) Coercion — abortion;
39-15-210 Third or subsequent violation of “Child Rape Protection Act of 2006”;
39-15-401(a) Child abuse (where child is between ages 7-17);
39-15-401(b) Child neglect and endangerment (where child is between ages 7-13);
39-15-404 Enticing a child to purchase intoxicating liquor —purchasing alcoholic beverage for child;
39-15-404 Allow person ages 18-21 to consume alcohol on person’s premises;
39-15-414 Harboring or hiding a runaway child;
39-17-315 Stalking;
39-17-431 Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;
39-17-437 Using substance or device to falsify drug test results & selling synthetic urine;
39-17-438 Possession of the hallucinogenic plant Salvia Divinorum or the synthetic cannabinoids;
39-17-452 Sale or possession of synthetic derivatives or analogues of methcathinone;
39-17-902(a) Importing, preparing, distributing, processing, or appearing in obscene material or Class A misdemeanors;
39-17-907 Unlawful exhibition of obscene material;
39-17-911 Sale or loan to minors of harmful materials;
39-17-918 Unlawful massage or exposure of erogenous areas;
39-17-1307(f)(1)(A) Possession of firearm after being convicted of misdemeanor crime of domestic violence;
39-17-1307(f)(1)(B) Possession of firearm while order of protection is in effect;
39-17-1307(f)(1)(C) Possession of firearm while prohibited by state or federal law;
39-17-1312 Failure of adult to report juvenile carrying gun in school;
39-17-1320(a) Nonparent providing handgun to a juvenile;
39-17-1352 Failure to surrender handgun carry permit upon suspension;
39-17-1363 Violent felon owning or possessing vicious dog;
39-13-101(a)(3) Assault (offensive or provocative physical contact);
39-13-511(a) Public indecency — first or second offense (punishable by \$500 fine only);

39-13-511(b)(2) Indecent exposure (victim 13 years old or older);
39-15-412(b) Disseminating smoking paraphernalia to minor after 3 prior violations;
39-16-404 Misuse of official information by public servant;
39-17-317 Disorderly conduct at funerals;
39-17-715 Possession of or consuming alcoholic beverages on K-12 school premises;
39-17-914 Display for sale or rental of material harmful to minors;
55-10-401 Driving under the influence of an intoxicant

For an offense committed PRIOR to NOVEMBER 1, 1989, these FELONIES OR MISDEMEANORS are ELIGIBLE FOR EXPUNCTION:

Person sentenced to a **determinate sentence** of **3 years or less**;

Person sentenced to an **indeterminate sentence** for which the person **served 3 years or less**;

Person has **never had a previous conviction expunged as the result of the successful completion of a diversion program** pursuant to §§40-15-102 – 40-15-106 or §40-35-313;

AND

The offense for which the person was convicted:

- Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

- Did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense;

- Did not involve the use or possession of a deadly weapon;

- Was not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under title 40, chapter 39 part 2; or any sex offense involving a minor;

- Did not result in the death, serious bodily injury or bodily injury to a person;

- Did not involve the use of alcohol or drugs and a motor vehicle;

- Did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance;

- Did not involve a minor as the victim of the offense; or

- Did not result in causing the victim or victims to sustain a loss of twenty-five thousand dollars (\$25,000) or more.



§ 40-32-101. Destruction or release; construction of law

West's Tennessee Code Annotated | Title 40. Criminal Procedure | Effective: July 1, 2015

Document Details

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Proposed Legislation

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[West's Tennessee Code Annotated](#)

[Title 40. Criminal Procedure](#)

[Chapter 32. Destruction of Records upon Dismissal or Acquittal](#)

T. C. A. § 40-32-101

§ 40-32-101. Destruction or release; construction of law

Effective: July 1, 2015

[Currentness](#)

(a)(1)(A) All public records of a person who has been charged with a misdemeanor or a felony shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

- (i) The charge has been dismissed;
- (ii) A no true bill was returned by a grand jury; or
- (iii) The person was arrested and released without being charged.

(B) A person applying for the expunction of records because the charge or warrant was dismissed in any court as a result of the successful completion of a pretrial diversion program pursuant to §§ 40-15-102 -- 40-15-107, shall be charged the appropriate court clerk's fee pursuant to § 8-21-401 for destroying such records.

(C) Deleted by 2012 Pub.Acts, c. 1041, § 3, eff. June 20, 2012.

(D) Notwithstanding subdivision (a)(1)(B) or (a)(6), the records of a person who successfully completes a pretrial diversion program pursuant to §§ 40-15-102 -- 40-15-107, or a judicial diversion program pursuant to § 40-35-313, shall not be expunged pursuant to this section, if the offense for which the person was diverted was a sexual offense as defined by § 40-39-202, or a violent sexual offense as defined by § 40-39-202.

(E) Except as provided in subsection (j), a person is not entitled to the expunction of such person's records if:

(i) The person is charged with an offense, is not convicted of the charged offense, but is convicted of an offense relating to the same criminal conduct or episode as the charged offense, including a lesser included offense; provided, however, any moving or nonmoving traffic offense shall not be considered an offense as used in this subdivision (a)(1)(E); or

(ii) The person is charged with multiple offenses or multiple counts in a single indictment and is convicted of:

(a) One (1) or more of the charged offenses or counts in the indictment; or

(b) An offense relating to the same criminal conduct or episode as one (1) of the offenses charged in the indictment, including a lesser included offense.

(F) Upon a verdict of not guilty being returned, whether by a judge following a bench trial or by a jury, on all charges for which the defendant was accused, the judge shall inquire of the person acquitted whether such person requests that all public records associated with the charges for which such person was acquitted be removed and destroyed without cost to the person and without the requirement that the person petition for destruction of such records. If the person requests that the public records related to such charges be removed and destroyed, the court shall so order. If the person acquitted does not request that such records be destroyed at the time the judge inquires pursuant to this subdivision (a)(1)(F), but subsequently requests that such records be destroyed, the person shall be required to follow the petition procedure set out in this section.

(2) All public records of a person required to post bond under § 38-3-109 or § 38-4-106 [repealed] shall be removed and destroyed as required by this chapter upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

(4) For purposes of this section, "court" includes any court exercising juvenile jurisdiction.

(5) All public records concerning an order of protection authorized by title 36, chapter 3, part 6, which was successfully defended and denied by the court following a hearing conducted pursuant to § 36-3-605, shall, upon petition by that person to the court denying the order, be removed and destroyed without cost to the person.

(6) Except as provided in subsection (f), it is the intent of this section that a person is entitled to the expunction of public records in a criminal case only if the person successfully completes a pretrial diversion program pursuant to §§ 40-15-102 --

[40-15-107](#) or a judicial diversion program pursuant to [§ 40-35-313](#), the charges against such person are dismissed, or the person is entitled to have all public records removed and destroyed by reason of one (1) of the results specified in this section.

(b)(1) “Public records,” for the purpose of expunction only, does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children’s services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of children’s services or department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(2) “Public records”, for the purpose of expunction only, does not include appellate court records or appellate court opinions.

(c)(1) Release of confidential records or information contained therein other than to law enforcement agencies for law enforcement purposes shall be a Class A misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or the comptroller of the treasury’s agent for purposes of audit investigation; the comptroller of the treasury or the comptroller of the treasury’s agent having this access shall protect the confidential nature of the records that are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to the attorney upon request.

(d)(1) Any court ordering the expunction of a person’s public records of a criminal offense, including orders issued as a result of the successful completion of a diversion program pursuant to [§§ 40-15-105](#) and [40-15-106](#) or judicial diversion program, shall send or cause to be sent a copy of the expunction order to the Tennessee bureau of investigation within thirty (30) days from the date of the expunction order for entry into its expunged offender and pretrial diversion database. The order shall contain the name of the person seeking expunction, the person’s date of birth and social security number, the offense that was dismissed, the date and cause of the dismissal and the date the order of expunction is entered.

(2)(A) Beginning July 1, 2012, defendant petitioning a court for expunction of records because the charge against the person was dismissed as a result of the successful completion of a diversion program pursuant to [§§ 40-15-102 -- 40-15-106](#) shall be assessed a three-hundred-fifty-dollar (\$350) fee. The fee shall be transmitted by the clerk of the court for deposit in a special fund and shall be used by the bureau for the following purposes:

- (i) Employing personnel;
- (ii) Purchasing equipment and supplies;
- (iii) Funding education, training and development of employees;
- (iv) Maintaining the expunged criminal offender and pretrial diversion database;
- (v) Computer system support;
- (vi) Maintenance expenses; and
- (vii) Any other purpose to allow the bureau's business to be done in a more efficient manner.

(B) The moneys received in the fund shall be invested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. Amounts in the fund shall not revert to the general fund of the state, but shall together with interest income credited to the fund remain available for expenditure in subsequent fiscal years.

(C) The three-hundred-fifty-dollar (\$350) fee under subdivision (d)(2)(A) shall not apply to any case where there has been an acquittal, nolle prosequi, or dismissal for failure to prosecute or where the law does not require a copy of the expunction order be sent to the Tennessee bureau of investigation.

(e) It is the intent of the general assembly that no fee ever be charged a person who is petitioning a court for expunction of records because:

(1) The charge against the person was dismissed for a reason other than the successful completion of a diversion program pursuant to §§ 40-15-102 -- 40-15-106 or § 40-35-313;

(2) A no true bill was returned by a grand jury;

(3) A verdict of not guilty was returned, whether by the judge following a bench trial or by a jury; or

(4) The person was arrested and released without being charged.

(f)(1) All public records of a person who has been charged and convicted with a misdemeanor or felony while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person, if:

(A) The charge has been dismissed;

(B) A no true bill was returned by a grand jury;

(C) A verdict of not guilty was returned, whether by the judge following a bench trial or by a jury;

(D) The person was arrested and released, without being charged; or

(E)(i) Thirty-seven (37) years or more have elapsed since the date of conviction for the offense being expunged and the petitioner has not been convicted of any other offense, excluding minor traffic violations, during that period of time;

(ii) Any period of supervision due to conviction has been completed;

(iii) The offense was a misdemeanor, Class C, D or E felony not otherwise excluded pursuant to subdivision (f)(1)(E)(iv), or, if committed prior to November 1, 1989, would be an included Class C, D, or E felony if committed after November 1, 1989;

(iv) The offense was not a Class A or Class B felony or a Class C felony described in § 40-15-105(a)(1)(B)(iii), a sexual offense described in § 40-15-105(a)(1)(B)(ii), or an offense prohibited by title 55, chapter 10, part 4, vehicular assault as prohibited by § 39-13-106, or if committed prior to November 1, 1989, would not be an excluded offense if committed after November 1, 1989; and

(v) The district attorney general is served a copy of the petition for expunction by certified mail, return receipt requested,

and the district attorney general does not file an objection with the court within twenty (20) calendar days of receipt of the petition.

(2) All public records of a person required to post bond under § 38-3-109 shall be removed and destroyed as required by this section upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

(4) For purposes of this subsection (f), "court" includes any court exercising juvenile jurisdiction.

(5) If the person charged or convicted is deceased, the petition may be filed by a person who is able to establish legal authority to act on the behalf of the deceased person.

(6) Notwithstanding any law to the contrary, upon request of the petitioner, records or documents subject to the destruction requirement of this subsection (f) that are utilized exclusively for education purposes and are displayed in public museums, libraries, and buildings are exempt from the destruction requirement.

(g)(1) For purpose of this subsection (g), "eligible petitioner" means:

(A) A person who was convicted of one of the following Class E felonies and sentenced to imprisonment for a term of three (3) years or less for an offense committed on or after November 1, 1989:

(i) [Section 39-11-411](#)--Accessory after the fact;

(ii) [Section 39-13-306](#)--Custodial interference where person not voluntarily returned by defendant;

(iii) [Section 39-13-604\(c\)\(2\)](#)--Knowing dissemination of illegally recorded cellular communication;

(iv) [Section 39-14-105\(a\)\(2\)](#)--Theft (\$501-\$999);

- (v) [Section 39-14-114\(c\)](#)--Forgery (up to \$1,000);

- (vi) [Section 39-14-115](#)--Criminal simulation (up to \$1,000);

- (vii) [Section 39-14-116\(c\)](#)--Hindering secured creditors;

- (viii) [Section 39-14-117\(b\)](#)--Fraud in insolvency;

- (ix) [Section 39-14-118](#)--Fraudulent use of credit card or debit card (\$501-\$999);

- (x) [Section 39-14-121](#)--Worthless checks (\$501-\$999);

- (xi) [Section 39-14-130](#)--Destruction of valuable papers (\$501-\$999);

- (xii) [Section 39-14-131](#)--Destruction or concealment of will;

- (xiii) [Section 39-14-133](#)--Fraudulent or false insurance claim (\$501-\$999);

- (xiv) [Section 39-14-137\(b\)](#)--Fraudulent qualifying for set aside programs (\$501-\$999);

- (xv) [Section 39-14-138](#)--Theft of trade secrets (\$501-\$999);

- (xvi) [Section 39-14-139](#)--Sale of recorded live performances without consent (\$501-\$999);

- (xvii) [Section 39-14-143](#)--Unauthorized solicitation for police, judicial or safety associations;

- (xviii) [Section 39-14-147\(f\)](#)--Fraudulent transfer of motor vehicle with value of less than \$20,000;

- (xix) [Section 39-14-149](#)--Communication theft (\$501-\$999 (fine only));
- (xx) [Section 39-14-153](#)--Home improvement fraud (\$500-\$1,000);
- (xxi) [Section 39-14-402](#)--Burglary of an auto;
- (xxii) [Section 39-14-408](#)--Vandalism (\$501-\$999);
- (xxiii) [Section 39-14-411](#)--Utility service interruption or property damage;
- (xxiv) [Section 39-14-505](#)--Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume);
- (xxv) [Section 39-14-602](#)--Violation of Tennessee Personal and Commercial Computer Act (\$501-\$999);
- (xxvi) [Section 39-14-603](#)--Unsolicited bulk electronic mail (\$500-\$999);
- (xxvii) [Section 39-16-201](#)--Taking telecommunication device into penal institution;
- (xxviii) [Section 39-16-302](#)--Impersonation of licensed professional;
- (xxix) [Section 39-16-603](#)--Evading arrest in motor vehicle where no risk to bystanders;
- (xxx) [Section 39-16-609\(e\)](#)--Failure to appear (felony);
- (xxxi) [Section 39-17-106](#)--Gifts of adulterated candy or food;
- (xxxii) [Section 39-17-417\(f\)](#)--Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000);

(xxxiii) [Section 39-17-417\(g\)\(1\)](#)--Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI drug marijuana (fine not greater than \$2,500);

(xxxiv) [Section 39-17-417\(h\)](#)--Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000);

(xxxv) [Section 39-17-418\(e\)](#)--Simple possession or casual exchange (3rd offense);

(xxxvi) [Section 39-17-422\(c\)](#)--Selling glue for unlawful purpose;

(xxxvii) [Section 39-17-423\(c\)](#)--Counterfeit controlled substance;

(xxxviii) [Section 39-17-425\(b\)\(1\), \(2\), \(3\)](#)--Unlawful drug paraphernalia uses and activities;

(B) Except as provided in this subdivision (g)(1)(B), a person who was convicted of a misdemeanor offense committed on or after November 1, 1989. Misdemeanors excluded from consideration are:

(i) [Section 39-13-101\(a\)\(1\) and \(2\)](#)--Assault;

(ii) [Section 39-13-102](#)--Aggravated assault of public employee;

(iii) [Section 39-13-111](#)--Domestic assault;

(iv) [Section 39-13-113\(g\)](#)--Violation of protective or restraining order;

(v) [Section 39-13-113\(h\)](#)--Possession of firearm while order of protection in effect;

(vi) [Section 39-13-511](#)--Public indecency 3rd or subsequent offense;

(vii) [Section 39-13-511](#)--Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a

guard;

(viii) [Section 39-13-526\(b\)\(1\) and \(2\)](#)--Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;

(ix) [Section 39-13-528](#)--Soliciting minor to engage in Class E sexual offense;

(x) [Section 39-13-533](#)--Unlawful sexual contact by authority figure;

(xi) [Section 39-14-118](#)--Fraudulent use of credit/debit card (up to \$500);

(xii) [Section 39-14-304](#)--Reckless burning;

(xiii) [Section 39-14-406](#)--Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;

(xiv) [Section 39-15-201\(b\)\(3\)](#)--Coercion--abortion;

(xv) [Section 39-15-210](#)--Third or subsequent violation of Child Rape Protection Act of 2006;

(xvi) [Section 39-15-401\(a\)](#)--Child abuse (where child is between ages 7-17);

(xvii) [Section 39-15-401\(b\)](#)--Child neglect and endangerment (where child is between ages 7-13);

(xviii) [Section 39-15-404](#)--Enticing a child to purchase intoxicating liquor--purchasing alcoholic beverage for child;

(xix) [Section 39-15-404](#)--Allowing person ages 18-21 to consume alcohol on person's premises;

(xx) [Section 39-15-414](#)--Harboring or hiding a runaway child;

(xxi) [Section 39-17-315](#)--Stalking;

(xxii) [Section 39-17-431](#)--Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;

(xxiii) [Section 39-17-437](#)--Using substance or device to falsify drug test results and selling synthetic urine;

(xxiv) [Section 39-17-438](#)--Possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids;

(xxv) [Section 39-17-452](#)--Sale or possession of synthetic derivatives or analogues of methcathinone;

(xxvi) [Section 39-17-902\(a\)](#)--Importing, preparing, distributing, processing, or appearing in obscene material or Class A misdemeanors;

(xxvii) [Section 39-17-907](#)--Unlawful exhibition of obscene material;

(xxviii) [Section 39-17-911](#)--Sale or loan to minors of harmful materials;

(xxix) [Section 39-17-918](#)--Unlawful massage or exposure of erogenous areas;

(xxx) [Section 39-17-1307\(f\)\(1\)\(A\)](#)--Possession of firearm after being convicted of misdemeanor crime of domestic violence;

(xxxi) [Section 39-17-1307\(f\)\(1\)\(B\)](#)--Possession of firearm while order of protection is in effect;

(xxxii) [Section 39-17-1307\(f\)\(1\)\(C\)](#)--Possession of firearm while prohibited by state or federal law;

(xxxiii) [Section 39-17-1312](#)--Failure of adult to report juvenile carrying gun in school;

- (xxxiv) [Section 39-17-1320\(a\)](#) --Nonparent providing handgun to a juvenile;
 - (xxxv) [Section 39-17-1352](#)--Failure to surrender handgun carry permit upon suspension;
 - (xxxvi) [Section 39-17-1363](#)--Violent felon owning or possessing vicious dog;
 - (xxxvii) [Section 39-13-101\(a\)\(3\)](#)--Assault (offensive or provocative physical contact);
 - (xxxviii) [Section 39-13-511\(a\)](#)--Public indecency--first or second offense (punishable by \$500 fine only);
 - (xxxix) [Section 39-13-511\(b\)\(2\)](#)--Indecent exposure (victim 13 years old or older);
 - (xl) [Section 39-15-412\(b\)](#)--Disseminating smoking paraphernalia to minor after 3 prior violations;
 - (xli) [Section 39-16-404](#)--Misuse of official information by public servant;
 - (xlii) [Section 39-17-317](#)--Disorderly conduct at funerals;
 - (xliii) [Section 39-17-715](#)--Possession of or consuming alcoholic beverages on K-12 school premises;
 - (xliv) [Section 39-17-914](#)--Display for sale or rental of material harmful to minors; and
 - (xlv) [Section 55-10-401](#)--Driving under the influence of an intoxicant;
- (C) A person who was convicted of a felony or misdemeanor committed prior to November 1, 1989, if:
- (i) The person was sentenced to a determinate sentence of three (3) years or less;

(ii) The person was sentenced to an indeterminate sentence for which the person served three (3) years or less;

(iii) The person has never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to §§ 40-15-102 -- 40-15-106 or § 40-35-313; and

(iv) The offense for which the person was convicted:

(a) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

(b) Did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense;

(c) Did not involve the use or possession of a deadly weapon;

(d) Was not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under chapter 39, part 2 of this title; or any sex offense involving a minor;

(e) Did not result in the death, serious bodily injury or bodily injury to a person;

(f) Did not involve the use of alcohol or drugs and a motor vehicle;

(g) Did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance;

(h) Did not involve a minor as the victim of the offense; or

(i) Did not result in causing the victim or victims to sustain a loss of twenty-five thousand dollars (\$25,000) or more;

(D) A person who was convicted of drug fraud pursuant to § 53-11-402(a)(3) and sentenced to imprisonment for a term of four (4) years or less for an offense committed on or after November 1, 1989; provided, however, that at least ten (10)

years have elapsed since completion of the sentence imposed for the offense; or

(E) A person who was convicted of more than one (1) of the offenses listed in this subdivision (g)(1), if the conduct upon which each conviction is based occurred contemporaneously, occurred at the same location, represented a single continuous criminal episode with a single criminal intent, and all such convictions are eligible for expunction under this part. The offenses of a person who is an eligible petitioner under this subdivision (g)(1)(E) shall be considered a single offense for the purposes of this section so that the person is eligible for expunction consideration if all other requirements are met.

(2) Notwithstanding the provisions of this section, effective July 1, 2012, an eligible petitioner may file a petition for expunction of that person's public records involving a criminal offense if:

(A) Except as provided in subdivision (g)(1)(E), at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses in other states, other than the offense committed for which the petition for expunction is filed; provided, however, that any moving or non-moving traffic offense shall not be considered a criminal offense as used in this subdivision (g)(2)(A);

(B) At the time of the filing of the petition for expunction at least five (5) years have elapsed since the completion of the sentence imposed for the offense;

(C) The person has fulfilled all the requirements of the sentence imposed by the court in which the individual was convicted of the offense, including:

(i) Payment of all fines, restitution, court costs and other assessments;

(ii) Completion of any term of imprisonment or probation;

(iii) Meeting all conditions of supervised or unsupervised release; and

(iv) If so required by the conditions of the sentence imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.

(3) A person seeking expunction shall petition the court in which the petitioner was convicted of the offense sought to be expunged is filed. Upon filing of the petition, the clerk shall serve the petition on the district attorney general for that judicial district. Not later than sixty (60) days after service of the petition, the district attorney may submit recommendations to the court and provide a copy of such recommendations to the petitioner.

- (4) Both the petitioner and the district attorney general may file evidence with the court relating to the petition.
- (5) In making a decision on the petition, the court shall consider all evidence and weigh the interests of the petitioner against the best interests of justice and public safety.
- (6) If the court denies the petition, the petitioner may not file another such petition until at least two (2) years from the date of the denial.
- (7) The district attorneys general conference shall, by September 1, 2012, create a simple form to enable a lay person to petition the court for expunction under this subsection (g).
- (8) The petition and proposed order shall be prepared by the office of the district attorney general and given to the petitioner to be filed with the clerk of the court. A petitioner shall be entitled to a copy of the order of expunction and such copy shall be sufficient proof that the person named in the order is no longer under any disability, disqualification or other adverse consequence resulting from the expunged conviction.
- (9) The district public defender of each judicial district shall annually conduct at least one (1) educational program providing information and assistance with the expunction process generally and the expunction process established pursuant to this subsection (g). The district public defenders conference shall maintain a video of the educational program on the conference's web site, if available.
- (10) Except as provided in subdivision (g)(17), the petitioner shall pay to the clerk of the court a fee of three hundred fifty dollars (\$350.00) upon the filing of the petition. Fifty dollars (\$50.00) of the fee shall be transmitted to the Tennessee bureau of investigation for the purpose of defraying the costs incurred from the additional expunction petitions filed and granted as the result of this subsection (g) or subsection (h). The clerk shall retain ten dollars (\$10.00) of the fee and shall remit the remainder to the trustee to be allocated in the following manner:
- (A) Five percent (5%) to the public defenders expunction fund;
- (B) Forty percent (40%) to the district attorneys expunction fund for the fiscal year 2012-2013; provided, however, that for all fiscal years following 2012-2013 this percent shall be forty-five percent (45%); and
- (C) Fifty-five percent (55%) to the state general fund for fiscal year 2012-2013; provided, however, that for all fiscal years following 2012-2013 this percent shall be fifty percent (50%).

(11) There is created within the district attorneys general conference a district attorneys expunction fund. Moneys in the district attorneys expunction fund shall be used to defray the expense incurred for the required record search and preparation of the petition and the proposed order of expunction under this subsection (g) or subsection (h). Any remaining moneys in the district attorneys expunction fund may be used by the district attorneys generals for law enforcement purposes, including, but not limited to, the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, the purchase of equipment and supplies necessary to carry out prosecutorial functions, the expenses of travel in the performance of official duties of the office, provided all reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter, salaries and salary supplements, which may only be paid through the district attorneys general conference for support staff. Such payments shall be subject to the limitation of § 40-3-209(b) on the use of any funds to supplement the salary of any assistant district attorney. Moneys in the district attorneys expunction fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year. All funds in the district attorneys expunction fund shall be subject to annual audit by the comptroller of the treasury.

(12) There is created within the state treasury a public defenders expunction fund. Moneys in the public defenders expunction fund shall be used to defray the expense incurred by conducting the educational activities required pursuant to this subsection (g). Subject to annual appropriation, any remaining moneys in the public defenders expunction fund may be used in furtherance of the services and programs provided by public defenders for each judicial district. Moneys in the public defenders expunction fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(13) Beginning on July 1, 2013, the department of finance and administration shall review the number of expunction petitions pursuant to this subsection (g), the cost of processing each petition and the amount of money paid in expunction fees to determine if the amount allotted to the state under subdivision (g)(10)(C) to implement this subsection (g) is adequate and if some portion of such funds could be used for other criminal justice purposes such as the criminal injuries compensation fund or drug court funding. The department shall report its findings to the general assembly in January of 2014.

(14) Beginning on July 1, 2013, the Tennessee bureau of investigation shall review the number of expunction petitions pursuant to this subsection (g), the cost of processing each petition and the amount of money paid in expunction fees to determine if the amount allotted the bureau to implement this subsection (g) is adequate and if some portion of such funds could be used for other criminal justice purposes such as the criminal injuries compensation fund or drug court funding. The bureau shall report its findings to the general assembly in January of 2014.

(15)(A) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this subsection (g) or subsection (h) entitles the petitioner to have all public records of the expunged conviction destroyed in the manner set forth in this section.

(B) Additionally, such an expunction has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial and conviction. Once the expunction order is granted and the petitioner pays the fee required by this subsection (g) or subsection (h), no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.

(C) A petitioner with respect to whom an order has been granted under this subsection (g) or subsection (h) shall not be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial or conviction in response to any inquiry made of the petitioner for any purpose.

(D) Expunction under this subsection (g) or subsection (h) means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse affects or direct disabilities by virtue of the criminal offense that was expunged.

(E) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this subsection (g) or subsection (h), and who is otherwise eligible under state or federal law to possess a firearm, shall be eligible to purchase a firearm pursuant to § 39-16-1316 and apply for and be granted a handgun carry permit pursuant to § 39-17-1351.

(16) The clerk of the court maintaining records expunged pursuant to this subsection (g) or subsection (h) shall keep such records confidential. These records shall not be public and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney and the circuit or criminal court judge.

(17) If the petitioner is unable to pay the fee required by subdivision (g)(10), the petitioner may enter into a payment plan with the clerk in order to pay the fee in installment payments; provided, however, that no order of expunction shall be granted pursuant to this subdivision (g)(17) until the total amount of the fee is paid. Once the petitioner has paid to the clerk of the court a total of three hundred fifty dollars (\$350.00) the fee shall be allocated by the clerk in the same manner set forth for the disposition of the three hundred fifty dollar (\$350.00) fee under subdivision (g)(10).

(h)(1) For purposes of this subsection (h), "eligible petitioner" means a person who was convicted of a nonviolent crime after January 1, 1980, if the person:

(A) Petitioned the court in which the petitioner was convicted of the offense and the judge finds that the offense was a nonviolent crime;

(B) Petitioned for and received a positive vote from the board of parole to receive a pardon; and

(C) Received a pardon by the governor.

(2) Notwithstanding the provisions of this section, effective July 1, 2013, an eligible petitioner under subdivision (h)(1) may file a petition for expunction of that person's public records involving the crime. The procedures in subdivisions (g)(3)-(6),

(8), (10), (15) and (16) will apply to a petitioner under this subsection (h).

(i) A person applying for expunction of records pursuant to this section or § 40-35-313 shall be charged the appropriate court clerk's fee pursuant to § 8-21-401, in addition to any other fees required by this section or § 40-35-313, unless the person is entitled to have such records removed and destroyed without cost to the person.

(j) A person who is ineligible for expunction of the person's records pursuant to subdivision (a)(1)(E) shall be entitled to partial expunction of any public records relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. The public records shall be expunged from the relevant databases of the national crime information center system and similar state databases, and the person shall be entered into the Tennessee bureau of investigation's expunged criminal offender and pretrial diversion database with regard to the offenses expunged pursuant to this subsection (j). Nothing in this subsection (j) shall require court clerks to expunge records relating to an offense for which the person was convicted.

Credits

1973 Pub.Acts, c. 318, § 1; 1975 Pub.Acts, c. 193, § 1; 1976 Pub.Acts, c. 790, § 1; 1977 Pub.Acts, c. 161, § 1; 1978 Pub.Acts, c. 736, § 1; 1980 Pub.Acts, c. 892, § 1, 2; 1982 Pub.Acts, c. 756, § 1; 1987 Pub.Acts, c. 335, §§ 1 to 4; 1996 Pub.Acts, c. 1079, § 127, eff. May 21, 1996; 1997 Pub.Acts, c. 455, § 1, eff. June 13, 1997; 1998 Pub.Acts, c. 1036, § 1, eff. May 18, 1998; 1998 Pub.Acts, c. 1099, § 7, eff. Oct. 1, 1998; 1999 Pub.Acts, c. 496, § 1, eff. July 1, 1999; 2000 Pub.Acts, c. 645, §§ 3, 5; 2000 Pub.Acts, c. 664, §§ 1 to 3; 2002 Pub.Acts, c. 495, §§ 1 to 4, eff. March 19, 2002; 2003 Pub.Acts, c. 50, § 1, eff. April 23, 2003; 2003 Pub.Acts, c. 175, § 1, eff. May 22, 2003; 2005 Pub.Acts, c. 429, § 12, eff. Jan. 1, 2006; 2006 Pub.Acts, c. 650, §§ 1, 3, eff. May 12, 2006; 2007 Pub.Acts, c. 363, § 2, eff. July 1, 2007; 2010 Pub.Acts, c. 951, §§ 1, 2, eff. May 26, 2010; 2012 Pub.Acts, c. 951, §§ 1 to 3, eff. July 1, 2012; 2012 Pub.Acts, c. 1041, § 3, eff. June 20, 2012; 2012 Pub.Acts, c. 1103, §§ 1, 2, eff. July 1, 2012; 2013 Pub.Acts, c. 384, §§ 1, 2, eff. July 1, 2013; 2013 Pub.Acts, c. 443, §§ 1 to 3, eff. July 1, 2013; 2014 Pub.Acts, c. 671, §§ 1 to 4, eff. July 1, 2014; 2014 Pub.Acts, c. 1008, § 1, eff. May 22, 2014; 2015 Pub.Acts, c. 89, §§ 1, 2, eff. July 1, 2015; 2015 Pub.Acts, c. 278, §§ 1, 2, eff. April 28, 2015; 2015 Pub.Acts, c. 295, § 2, eff. April 24, 2015.

[Notes of Decisions \(57\)](#)

T. C. A. § 40-32-101, TN ST § 40-32-101

Current with laws from the 2016 Second Reg. Sess., eff. through February 1, 2016

**PETITION FOR EXPUNCTION OF RECORD OF CONVICTION PURSUANT TO T.C.A.
§40-32-101(g)**

**IF YOU WERE CONVICTED OF OR PLED GUILTY TO TWO (2) OR MORE CRIMES
ARISING FROM SEPARATE CRIMINAL EVENTS YOU CANNOT HAVE THE CHARGES
EXPUNGED**

Before any petition to expunge a record pursuant to T.C.A. §40-32-101(g) can be filed the following steps must be successfully completed and the required documents attached.

- You must have no other convictions in this or any other jurisdiction other than the one to be expunged.
- You must have completed all terms of imprisonment, probation, or parole. At least five (5) years must have elapsed since the completion of the sentence imposed for the offense. If the sentence included probation or parole, the sentence was completed at the end of the probationary period.
- You must have met all conditions of supervised or unsupervised release, such as parole, probation, or community service, as evidenced by an official statement from the agency responsible for supervising your release, such as the State parole office, the State or County probation or community service agency.
- You must have a copy of the record of the conviction to be expunged. *(This may be obtained from either the Criminal Court Clerk or the General Sessions Court Clerk, depending on which Court entered the conviction.)*
- You must have paid all fines, restitution, court costs and other assessments as evidenced by a statement from the appropriate Court Clerk, *(This may be obtained from either the Criminal Court Clerk or the General Sessions Court Clerk, depending on which Court entered the conviction.)* or other documentary evidence showing that the obligation has been satisfied.
- The conviction must be for either a Class E felony included in the inclusion list attached or a Misdemeanor that is NOT included on the exclusion list attached.
- If so required by the conditions of the sentence imposed, you must have remained free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.
- You must have photo identification or government issued ID.
- In addition to other fees required by the Court Clerk, for expunction under T. C. A. 40-32-101(g) you must pay a fee of \$350 to the Clerk of the Court where the conviction was entered at the time of filing the Petition.

List the cities and states where you have lived since your conviction

Petitioner understands that the District Attorney is not giving legal advice, but is performing an administrative function pursuant to TCA 40-32-101(g) by assisting in the completion of the petition to expunge and the order of expungement.

Petitioner further understands that the order granting expungement does not reinstate his/her voting rights or other citizenship rights, and that further action may be required to have any of those rights restored.

Petitioner understands that the filing of the petition for expungement does not guarantee that the petition will be granted by the Court.

Petitioner further understands that statements made in the petition for expungement are made under penalty of perjury in connection with an official proceeding.

Petitioner

INCLUSION LIST

A Class E felony committed after November 1, 1989, may be expunged if the sentence was for three (3) years or less and appears in the below list. (If the conviction is for a class E felony committed after November 1, 1989, and is not on this list, it cannot be expunged. If the sentence was for more than three (3) years it cannot be expunged.)

- 39-11-411 Accessory after the fact;
- 39-13-306 Custodial interference where person not voluntarily returned by defendant;
- 39-13-604(c)(2) Knowing dissemination of illegally recorded cellular communication;
- 39-14-105(2) Theft (\$501-\$999)
- 39-14-114(c) Forgery (up to \$1,000);
- 39-14-115 Criminal simulation (up to \$1,000);
- 39-14-116(c) Hindering secured creditors;
- 39-14-117(b) Fraud in insolvency;
- 39-14-118 Fraudulent use of credit card or debit card (\$501-\$999);
- 39-14-121 Worthless checks (\$501-\$999);
- 39-14-130 Destruction of valuable papers (\$501-\$999);
- 39-14-131 Destruction or concealment of will;
- 39-14-133 Fraudulent or false insurance claim (\$501-\$999);
- 39-14-137(b) Fraudulent qualifying for set aside programs (\$501-\$999);
- 39-14-138 Theft of trade secrets (\$501-\$999);
- 39-14-139 Sale of recorded live performances without consent (\$501-\$999);
- 39-14-143 Unauthorized solicitation for police, judicial or safety associations;
- 39-14-147(f) Fraudulent transfer of motor vehicle with value of less than \$20,000;
- 39-14-149 Communication theft (\$501-\$999 (fine only);
- 39-14-153 False information in applying for housing project accommodations
- 39-14-402 Burglary of an auto;
- 39-14-408 Vandalism (\$501-\$999);
- 39-14-411 Utility service interruption or property damage;
- 39-14-505 Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume);
- 39-14-602 Violation of Tennessee Personal and Commercial Computer Act (\$501-\$999);
- 39-14-603 Unsolicited bulk electronic mail (\$500- \$999);
- 39-16-201 Taking telecommunication device into penal institution;
- 39-16-302 Impersonation of licensed professional;
- 39-16-603 Evading arrest in motor vehicle where no risk to bystanders;
- 39-16-609(e) Failure to appear (felony);
- 39-17-106 Gifts of adulterated candy or food;
- 39-17-417(f) Manufacture, delivery, sale or possession of Schedule V drug (fine not greater than \$5,000);
- 39-17-417(g)(1) Manufacture, delivery, sale or possession of not less than ½ ounce and not more than 10 pounds of Schedule VI; drug marijuana (fine not greater than \$1,000);
- 39-17-417(h) Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000);
- 39-17-418(e) Simple possession or casual exchange (3rd offense);
- 39-17-422(c) Selling glue for unlawful purpose;
- 39-17-423(c) Counterfeit controlled substance;
- 39-17-425(b)(1), (2), (3) Unlawful drug paraphernalia uses and activities;

EXCLUSION LIST

If the conviction is for a misdemeanor committed after November 1, 1989, and is on this list, then that conviction cannot be expunged.

- 39-13-101(a)(1) and (2) Assault;
- 39-13-102 Aggravated assault of public employee;
- 39-13-111 Domestic assault;
- 39-13-113(g) Violation of protective or restraining order;
- 39-13-113(h) Possession of firearm while order of protection in effect;
- 39-13-511 Public indecency 3rd or subsequent offense;
- 39-13-511 Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;
- 39-13-526(b)(1)(2) Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;
- 39-13-528 Soliciting minor to engage in Class E sexual offense;
- 39-13-533 Unlawful sexual contact by authority figure;
- 39-14-118 Fraudulent use of credit/debit card (up to \$500);
- 39-14-304 Reckless burning;
- 39-14-406 Aggravated criminal trespass of a habitation, hospital, or on the campus of any public or private school, or on railroad property;
- 39-15-201(b)(3) Coercion — abortion;
- 39-15-210 third or subsequent violation of “Child Rape Protection Act of 2006”;
- 39-15-401(a) Child abuse (where child is between ages 7- 17);
- 39-15-401(b) Child neglect and endangerment (where child is between ages 7-13);
- 39-15-404 Enticing a child to purchase intoxicating liquor — purchasing alcoholic beverage for child;
- 39-15-404 Allow person 18-21 to consume alcohol on person’s premises;
- 39-15-414 Harboring or hiding a runaway child;
- 39-17-315 Stalking;
- 39-17-431 Unlawful dispensing of immediate methamphetamine precursor, sale of meth precursor to person on methamphetamine registry or purchase by someone on registry, possess meth precursor with intent to sell to another for unlawful use, purchase meth precursor for another for unlawful use, purchase meth precursor at different times and places to circumvent limits, and use false ID to purchase meth precursor for purpose of circumventing limits;
- 39-17-437 Using substance or device to falsify drug test results and selling synthetic urine;
- 39-17-438 Possession of the hallucinogenic plant Salvia Divinorum or the synthetic cannabinoids;
- 39-17-452 Sale or possession of synthetic derivatives or analogues of methcathinone;
- 39-17-902(a) Importing, preparing, distributing, processing, or appearing in obscene material or A misdemeanors;
- 39-17-907 Unlawful exhibition of obscene material;
- 39-17-911 Sale or loan to minors of harmful materials;
- 39-17-918 Unlawful massage or exposure of erogenous areas;
- 39-17-1307(f)(1)(A) Possession of firearm after being convicted of misdemeanor crime of domestic violence;
- 39-17-1307(f)(1)(B) Possession of firearm while order of protection is in effect;
- 39-17-1307(f)(1)(C) Possession of firearm while prohibited by state or federal law;
- 39-17-1312 Failure of adult to report juvenile carrying gun in school;
- 39-17-1320(a) Non parent providing handgun to a juvenile;
- 39-17-1352 Failure to surrender handgun carry permit upon suspension;

39-17-1363 Violent felon owning or possessing vicious dog;
39-13-101(a)(3) Assault (offensive or provocative physical contact);
39-13-511(a) Public indecency — first or second offense (punishable by \$500 fine only);
39-13-511(b)(2) Indecent exposure (victim 13 years old or older);
39-15-412(b) Disseminating smoking paraphernalia to minor after 3 prior violations;
39-16-404 Misuse of official information by public servant;
39-17-317 Disorderly conduct at funerals;
39-17-715 Possession of or consuming alcoholic beverages on K-12 school premises;
39-17-914 Display for sale or rental of material harmful to minors; and
55-10-401 Driving under the influence of an intoxicant;

OFFENSE COMMITTED BEFORE NOVEMBER 1, 1989

If the conviction is for an offense committed before November 1, 1989, all of the below criteria must be met.

1. The sentence was either a determinate sentence, of three (3) years or less OR sentenced to an indeterminate sentence for which the person served three (3) years or less.
2. The convicted person never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to §§ 40-15-102—40-15-106 or § 40-35-313;
3. The convicted offense did not have as an element the use, attempted use, or threatened use of physical force against the person of another;
4. The convicted offense did not involve, by its nature, a substantial risk that physical force against the person of another would be used in the course of committing the offense;
5. The convicted offense did not involve the use or possession of a deadly weapon;
6. The convicted offense was not a sex offense for which the offender is required to register as a sexual offender or violent sexual offender under title 40, chapter 39 part 2; or any sex offense involving a minor;
7. The convicted offense did not result in the death, serious bodily injury or bodily injury to a person;
8. The convicted offense did not involve the use of alcohol or drugs and a motor vehicle;
9. The convicted offense did not involve the sale or distribution of a Schedule I, II, III, or IV controlled substance;
10. The convicted offense did not involve a minor as the victim of the offense; or
11. The convicted offense did not result in causing the victim or victims to sustain a loss of twenty-five thousand dollars (\$25,000) or more.

Formal Ethics Opinion

▼ **Request by district attorney as to whether district attorney can ethically comply with requirements of TCA 40-32-101(g) when preparing petition for expungement**

PROFESSION OF LAW: District Attorney — Conflict of Interest. CRIMINAL PROCEDURE: Expungement. Formal ethics opinion has been requested by district attorney (DA) regarding TCA 40-32-101(g), which took effect 7/1/12. Statute provides means by which person may obtain expungement of public records of conviction of eligible criminal offense. In order for DA to perform functions required by TCA 40-32-101(g), DA must avoid forming attorney-client relationship with petitioner and, thereby, avoid conflict of interest and other duties which would be imposed by Rules of Professional Conduct. DA should advise petitioner that DA represents state in matter and clarify DA's role in matter that by preparing petition and order, DA does not represent petitioner. DA should obtain acknowledgment from petitioner that petitioner does not become client of DA by DA performing functions required by statute and that none of duties imposed upon attorney-client relationship by Rules of Professional Conduct, including confidentiality and conflicts of interest, attach as consequence of performing functions required by statute. This acknowledgement could be included in form required by TCA 40-32-101(g) and petition of expungement prepared by DA's office. DA should request information from petitioner only to extent necessary to prepare petition for expungement and resulting order and should not give legal advice to petitioner regarding petition. DA could advise petitioner that he or she can seek advice of other counsel. TCA 40-32-101(g) requires that copy of recommendation to court be provided to petitioner. It would be acceptable to advise petitioner that given information provided to and collected by DA, it does not appear that petition meets requirements for expungement. Request for ethics opinion posed eight questions: (1) Can DA or member of DA's staff prepare petitions to expunge criminal records on behalf of criminal defendants? Answer is yes — but only if DA advises petitioner that DA represents state and does not represent petitioner and advises petitioner that he or she may seek advice of independent counsel, consistent with opinion. (2) Can DA or member of DA's staff prepare petitions to expunge criminal records on behalf of criminal defendants knowing that DA will potentially oppose petition? Answer is yes — but only if DA does not know that information contained in petition and order prepared by DA is false, consistent with this opinion. (3) Does DA have ethical obligation to tell defendant that his petition does not qualify for expungement? Answer is no if no attorney-client relationship exists. (4) Does DA have ethical obligation to tell defendant that he or she will be representing state and filing pleading to dismiss petition? Answer is yes — consistent with RPC 4.3. (5) Does DA who prepares petition on behalf of criminal defendant become advocate for that defendant as to petition? Answer is no — consistent with this opinion. (6) Can DA ethically prepare petition for submission to court when DA knows that petitioner does not qualify for expungement? Answer is that DA cannot assist petitioner in preparation of fraudulent petition. (7) Should DA advise criminal defendant seeking to have petition

prepared by DA to seek advice from independent counsel? Answer is yes — consistent with RPC 4.3. (8) What, if any, conflict of interest exists for DA when he or she knows that criminal defendant will have to pay \$350 filing fee and that District Attorneys General Conference will receive 45% of fee but it is virtually guaranteed that petition will be denied and defendant will gain nothing from expenditure of these funds? Answer is none — if prepared consistent with this opinion. (*Formal Ethics Opinion 2012-F-155*, 37 TAM 42-33, 9/21/12, 8 pages.)

Permission to Appeal

- Allen v. City of Memphis*, 37 TAM 26-17 (CA 5/10/12), appeal denied 10/1/12
- Allen v. State*, 37 TAM 18-24 (CCA 3/13/12), appeal denied 10/1/12
- Culbertson v. Culbertson*, 37 TAM 25-8 (CA 5/23/12), appeal denied 9/26/12
- Fuller v. State*, 37 TAM 33-22 (CCA 6/12/12), appeal denied 9/27/12
- Pittman v. State*, 37 TAM 27-23 (CCA 5/10/12), appeal denied 9/27/12
- State v. Carson*, 37 TAM 24-15 (CCA 4/27/12), appeal denied 10/1/12
- State v. Clark*, 37 TAM 22-20 (CCA 4/17/12), appeal denied 10/1/12
- State v. Gholston*, 37 TAM 33-26 (CCA 6/14/12), appeal denied 9/27/12
- State v. Middlebrook*, 37 TAM 39-36 (CCA 7/12/12), appeal denied 10/1/12
- State v. Peters*, 37 TAM 28-34 (CCA 5/9/12), appeal denied 10/1/12
- State v. Rosson*, 37 TAM 27-18 (CCA 5/18/12), appeal denied 10/5/12

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I certify that the statements made by me above are correct and complete.
Signature/LAWTON MILLER, CFO

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2012-F-155

Can district attorneys ethically comply with the requirements of T.C.A. 40-32-101(a)?

A formal ethics opinion has been requested by a district attorney regarding T.C.A. 40-32-101(g), inacted effective July 1, 2012. The statute provides the means by which a person may obtain expungement of public records of conviction of an eligible criminal offense. Section (g)(1) enumerates the criminal offenses eligible to be expunged, as well as those excluded from consideration. Section (g)(2) provides the criteria for an offense to be expunged, including: (A) having never been convicted of any other criminal offense, including in federal and/or other states courts; (B) the lapse of five years since the completion of the sentence imposed for the subject offense, and; (C) that all requirements of the sentence have been fulfilled.

Section (g)(3) requires a person seeking expungement of a conviction to petition the court in which the person was convicted; that upon filing, the clerk shall serve the petition on the district attorney general; and that within 60 days "...the district attorney may submit recommendations to the court and provide a copy of such recommendations to the petitioner." Section (g)(4) provides that both the petitioner and the district attorney may file evidence with the court relating to the petition. Section (g)(5) requires the court to consider all evidence and weigh the interest of the petitioner and the best interest of justice and public safety. Section (g)(7) requires that by September 1, 2012, the district attorneys general conference create a simple form to enable a lay person to petition the court for expungement.

Section (g)(8) provides, in part, that "[t]he petition and proposed order shall be prepared by the office of the district attorney general and given to the petitioner to be filed with the clerk of the court..." Section (g)(10) provides that 40/45% of the \$350 filing fee paid to the clerk by the petitioner is to be paid to the district attorneys expungement fund. Section (g)(11) establishes the fund "...to defray the expense incurred for the required records search and preparation of the petition and proposed order...". The sequence set forth in the statute requires the district attorney to prepare the petition and order and give same to the petitioner before the petitioner files the petition and order with the clerk and pays the fee, part of which is for the records check. Whether the required records check will be conducted and the results reported to the district attorney before the district attorney prepares the petition and order and gives same to the petitioner for filing cannot be determined.

Compliance by the office of the district attorney with T.C.A. 40-32-101(g) raises several ethics issues and concerns. The resolution of those issues depends on whether the preparation of the petition and order by the office of the district attorney as required by the statute forms an attorney/client relationship between the district attorney and the petitioner or are simply administrative functions which do not entail the formation of such an attorney/client relationship. If an attorney/client relationship is formed between the district attorney and the petitioner, duties provided in Supreme Court Rule 8, Rules of Professional Conduct (RPC), including Competence, RPC 1.1,¹ Diligence, RPC 1.3,² Communication, RPC 1.4,³ Confidentiality, RPC 1.6,⁴ Conflicts of Interest, RPC 1.7,⁵

¹ RPC 1.1 provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

² RPC 1.3 provides:

A lawyer shall act with reasonable diligence and promptness in representing a client.

³ RPC 1.4 provides:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in RPC 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

⁴ RPC 1.6(a) provides:

(a) A lawyer shall not reveal information relating to the representation of a client unless:

- (1) the client gives informed consent;
- (2) the disclosure is impliedly authorized in order to carry out the representation; or
- (3) the disclosure is permitted by paragraph (b) or required by paragraph (c).

Cmt. [3] to RPC 1.6 provides that "[t]he confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all communication relating to the representation, whatever its source." There is no public records exception to the confidentiality rule with respect to current clients.

⁵ RPC 1.7 (a)(b) provide:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may

1.8(b)⁶ and 1.9,⁷ Meritorious Claims and Contentions, RPC 3.1,⁸ and Candor Toward the Tribunal, RPC 3.3,⁹ would be imposed upon the district attorney, even if the functions are performed by non-lawyer staff.¹⁰

represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

⁶ RPC 1.8(b) provides:

- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client, unless the client gives informed consent, except as permitted or required by these Rules.

⁷ RPC 1.9 (a)(c) provide:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter reveal information relating to the representation or use such information to the disadvantage of the former client unless (1) the former client gives informed consent, confirmed in writing, or (2) these Rules would permit or require the lawyer to do so with respect to a client, or (3) the information has become generally known.

⁸ RPC 3.1 provides:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

⁹ RPC 3.3 (a)(1) prohibits a lawyer from making a false statement of fact or law to a tribunal, (b) prohibits offering evidence that the lawyer knows to be false, (c) prohibits a lawyer from affirming the validity of any evidence of or otherwise using any evidence the lawyer knows to be false, and (e)(f) require an attorney to withdraw from the representation of the client if the lawyer knows that the client intends to perpetrate a crime or fraud upon the tribunal or otherwise commit an offense against the administration of justice.

¹⁰ RPC 5.3(a)(b)(c) provide:

With respect to a non lawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

T.C.A. 8-7-103 provides the "Duties" of the district attorney. The client of the district attorney is the state of Tennessee. See, Tennessee Formal Ethics Opinion (TFEO) 2002-F-146 (a public prosecutor has as his client the state). "Tempered only by their impartial search for justice, prosecutors are to keep the interest of the State as their preeminent concern." State v. White, 114 S.W. 3d 469, 477 (Tenn. 2003).

TFEO 2002-F-146 held that "the duties of a state prosecutor or assistant and such lawyer's duties as criminal defense counsel in a state court are clearly in conflict." The opinion quoted from an ABA Formal Opinion and states, in part:

A public prosecutor has as his client the state. It is obvious therefore that he cannot appear for any defendant in cases in which the state is an adverse party. The second paragraph of Canon 6 provides in substance that a lawyer cannot represent conflicting interests "except by express consent of all concerned given after a full disclosure of the facts." In Opinion 16 it was held that the prosecutor could not represent both the public and the defendant, and that a law firm cannot serve two masters, because, "The positions are inherently antagonistic and this would be so irrespective of Canon 6. No question of consent can be involved as the public is concerned and it cannot consent."

This Board has expressly adopted the reasoning of the ABA as set forth above in the past, and agrees with the ABA's holding that the two positions are so inherently antagonistic, there can be, no consent to, or waiver of the conflict by the public. Even though the provision of Canon 6 of the old Canons of Professional Ethics are not identical to this state's Code of Professional Responsibility, similarly, there can be no consent to such a conflict by the public in Tennessee.

Applying the former Code of Professional Responsibility, the Supreme Court referenced TFEO 2002-F-146 in State v. White, supra, 114 S.W. 3d. 469 and stated in part:

This court has clarified that an actual conflict of interest includes any circumstances in which an attorney cannot exercise his or her independent professional judgment free of "compromising interests and loyalties." See *Culbreath*, 30 S.W.3d at 312-13; see also Tenn. R. Sup. Ct. 8, EC 5-1. In the context of multiple employment, for example, an actual conflict arises where an attorney's continuance of such employment "would be likely to involve the lawyer in representing differing interests." Tenn. Sup. Ct. R. 8, DR 5-105(B). If a conflict exists, it may only be cured if "it is obvious that the lawyer can adequately represent the interest of each [client] and if each [client] consents to the representation after full disclosure of the possible effect of such representation on the exercise of a lawyer's

independent professional judgment on behalf of each.” Tenn. Sup. Ct. R. 8, DR 5-105(C).

Id. at 476-477.

. . . The Disciplinary Rules preventing conflicts of interests were specifically designed to free the lawyer’s judgment from such “compromising interests and loyalties.” Tenn. R. Sup. Ct. 8, EC 5-1; *see also Blackwood*, 46 S.W.3d at 187; *Culbreath*, 30 S.W.3d at 312-13.

Id. at 478.

T.C.A. 40-12-10 (g)(3)(4)(5) create potentially adversarial and conflicting interest between the duties to be performed by the district attorney for the petitioner on the one hand and for the state on the other. If by preparing the petition and order as required by the statute an attorney/client relationship is formed between the district attorney and the petitioner, the district attorney will be faced in every instance with the potential for a conflict of interest. RPC 1.7.⁵

In order for the office of the district attorney to prepare the petition and order, the petitioner will necessarily provide information to the district attorney regarding the subject conviction, when the sentence was completed, whether the petitioner has any other convictions and other information required for preparation of the petition and order. As stated above, the required records check may or may not be performed prior to district attorney preparing the petition and order and giving same to the petitioner for filing. If the district attorney determines that the criminal offense does not fall within those eligible for expungement pursuant to section (g)(1) or if the petitioner does not meet the requirements of section (g)(2), it would be the duty of the district attorney in his representation of the state to oppose the petition for expungement filed by the petitioner. If an attorney/client relationship was formed between the district attorney and the petitioner, RPC 1.6(a)⁴ and RPC 1.8(b)⁶ would preclude the district attorney from using information relating to the representation of the petitioner/client to the disadvantage of the petitioner/client or to pursue an interest against the petitioner/client to recommend or seek denial of the petition, as permitted by sections (g)(3)(4) and as the duties owed by the district attorney to the state would require. If the information provided by the petitioner/client and/or the required records check reflects that the petition lacks merit, the district attorney would be precluded by the RPC 3.1⁸ from preparing an unmeritorious petition and order. RPC 3.3(a)(1),(b),(c)⁹ would preclude the district attorney from going forward with the representation of the petitioner/client on the bases of information which the district attorney knows to be false. If the representation by the district attorney ceased and the petitioner went forward with the petition on the basis of false information, the district attorney would be precluded by RPC 1.9(a)(c)⁷ from revealing or using information relating to the former representation of the petitioner/client to the disadvantage of the petitioner/former client in recommending or seeking to defeat the petition.

RPC 1.7 (a)(1)(2)⁵ precludes the district attorney from accepting representation of the petitioner because the representation of the petitioner and the state with respect to expungement would be directly adverse or there is a significant risk that the representation of one client would be substantially limited by the districts attorney's representation of the other. One client's interest would necessarily be compromised by the interest of the other. The conflict of interest could not be waived because the district attorney could not provide competent and diligent representation to both the petitioner and the state of Tennessee, as required by RPC 1.7(b)(1)⁵ for waiver. See also, TFE0 2002-F-146 herein above.

In order for the district attorney to perform the functions required by T.C.A. 40-32-101(g), the district attorney must avoid forming an attorney/client relationship with the petitioner¹¹ and, thereby, avoid the conflict of interest and other duties which would be imposed by the Rules of Professional Conduct. The district attorney should advise the petitioner that the district attorney represents the state in the matter and clarify the district attorney's role in the matter that by preparing the petition and order the district attorney does not represent the petitioner.¹² The district attorney should obtain an acknowledgement from the petitioner that the petitioner does not become a client of the district attorney by the district attorney performing the functions required by the statute and that none of the duties imposed upon an attorney/client relationship by the Rules of Professional Conduct, including confidentiality and conflicts of interest, attach as a consequence of performing the functions required by the statute. This acknowledgement could be included in the form required by section (g)(7) and petition for expungement prepared by the office of the district attorney general.¹⁰

The district attorney should request information from the petitioner only to the extent necessary to prepare the petition for expungement and resulting order and should not give legal advice to the petitioner regarding the petition.¹² The district attorney could advise the petitioner that they can seek the advice of other counsel.¹² Section (g)(3) requires that a copy of the recommendation to the court be provided to the petitioner. It would be acceptable to advise the petitioner that given information provided to and collected by the

¹¹ The Restatement of the Law, The Law Governing Lawyers (2000) §14 provides:

A relationship of client and lawyer arises when:

- (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either
 - (a) the lawyer manifests to the person consent to do so; or
 - (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
- (2) a tribunal with power to do so appoints the lawyer to provide the services.

¹² RPC 4.3 provides:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interest of such a person are, or have a reasonable possibility of being, in conflict with the interest of the client.

district attorney, that it does not appear that the petition meets the requirements for expungement.

The request for formal ethics opinion posed the following questions, which are answered as follows:

1. Can the District Attorney General or members of their staff prepare petitions to expunge criminal records on behalf of criminal defendants?

ANSWER: Yes, but only if the district attorney advises the petitioner that the district attorney represents the state and does not represent the petitioner and advises the petitioner that they may seek the advice of independent counsel, consistent with this opinion.

2. Can the District Attorney General or members of their staff prepare petitions to expunge criminal records on behalf of criminal defendants knowing that the District Attorney General will potentially oppose the petition?

ANSWER: Yes, but only if the district attorney does not know that information contained in the petition and order prepared by the district attorney is false, consistent with this opinion.

3. Does the District Attorney have an ethical obligation to tell a defendant that his petition does not qualify for expungement?

ANSWER: Not if no attorney/client relationship exists.

4. Does the District Attorney have an ethical obligation to tell the defendant that we will be representing the State and filing a pleading to dismiss the petition?

ANSWER: Yes, consistent with RPC 4.3.

5. Does the District Attorney who prepares a petition on behalf of a criminal defendant become an advocate for that defendant as to the petition?

ANSWER: No, consistent with this opinion.

6. Can the District Attorney General ethically prepare a petition for submission to a court when the District Attorney General knows that the petition does not qualify for expungement.

ANSWER: The district attorney cannot assist the petitioner in preparation of fraudulent petition.

7. Should the District Attorney General advise a criminal defendant seeking to have a petition prepared by the District Attorney General to seek advice from independent counsel?

ANSWER: Yes, consistent with RPC 4.3.

8. What if any conflict of interest exists for the District Attorney General when he or she knows that a criminal defendant will have to pay the \$350, filing fee and that the District Attorney's Conference will receive forty-five percent of the fee but it is virtually guaranteed that the petition will be denied and the defendant will gain nothing from the expenditure of these funds?

ANSWER: None if prepared consistent with this opinion.

This 21st day of September, 2012.

ETHICS COMMITTEE:

Russ Parkes

Susan McGannon

Francis Guess

APPROVED AND ADOPTED BY THE BOARD

IN THE _____ COURT FOR _____ COUNTY

PETITION FOR CERTIFICATE OF EMPLOYABILITY
TENNESSEE CODE ANNOTATED SECTION 40-29-107

Name: _____ Date of Birth: _____

Alias(es): _____

Address: _____

(Street) (City) (State) (County) (ZIP)

Length of Residence in Tennessee: _____ Years _____ Months

Social Security Number(s) (including for alias(es)): _____

Criminal History (Include each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty):

Employment History (Specify the name of each employer, position held, and dates of employment):

Verifiable References and Endorsements: _____


Person(s) Who Support Reentry Plan (List One or More Immediate Family Members or Other Persons with Whom You Have a Close Relationship): _____

Summary of the Reason(s) a Certificate of Employability Should Be Granted: _____

Print Name

Signature

Date

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

[West's Tennessee Code Annotated](#)

[Title 37. Juveniles](#)

[Chapter 1. Juvenile Courts and Proceedings](#)

[Part 1. General Provisions \(Refs & Annos\)](#)

T. C. A. § 37-1-153

§ 37-1-153. Inspection of court files and records

Effective: July 10, 2014

[Currentness](#)

(a) Except in cases arising under [§ 37-1-146](#), all files and records of the court in a proceeding under this part are open to inspection only by:

(1) The judge, officers and professional staff of the court;

(2) The parties to the proceeding and their counsel and representatives;

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

(5) With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

(b) Notwithstanding subsection (a), petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public if:

(1) The juvenile is fourteen (14) or more years of age at the time of the alleged act; and

(2) The conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping.

(c) Notwithstanding the provisions of this section, if a court file or record contains any documents other than petitions and orders, including, but not limited to, a medical report, psychological evaluation or any other document, such document or record shall remain confidential.

(d)(1) Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the files and records of the juvenile court, including the child's name and address.

(2) A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.

(e) Notwithstanding other provisions of this section, where notice is required under § 49-6-3051, an abstract of the appropriate adjudication contained in the court file or record shall be made and provided to the parent, guardian, or other custodian of the juvenile, including the department, and this abstract shall be presented to the school in which the juvenile is, or may be, enrolled, in compliance with § 49-6-3051.

(f)(1) Notwithstanding any law to the contrary, any person who is tried and adjudicated delinquent by a juvenile court may subsequently petition the juvenile court for expunction of all court files and records. The court may order all or any portion of the requested expunction if, by clear and convincing evidence, the court finds that the petitioner:

(A)(i) Is currently eighteen (18) years of age or older;

(ii) Is at least one (1) year removed from the person's most recent delinquency adjudication; and

(iii) Has never been convicted of a criminal offense as an adult, has never been convicted of a criminal offense following transfer from juvenile court pursuant to § 37-1-134, and has never been convicted of a sexual offense as defined in § 40-39-202, whether in juvenile court, following transfer from juvenile court pursuant to § 37-1-134, or as an adult;

(iv) Does not have an adjudication of delinquency for a violent juvenile sexual offense as defined in § 40-39-202;

(B) Has maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or

more years immediately preceding the filing of the expunction petition; or

(C) The juvenile has made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child and the community.

(2) Nothing in this subsection (f) shall be construed to apply to any law enforcement records, files, fingerprints or photographs pertaining to any delinquency adjudication.

Credits

1970 Pub.Acts, c. 600, § 51; 1994 Pub.Acts, c. 998, § 1, eff. May 10, 1994; 1999 Pub.Acts, c. 366, § 1, eff. July 1, 1999; 2003 Pub.Acts, c. 238, § 2, eff. June 2, 2003; 2005 Pub.Acts, c. 265, § 4, eff. Jan. 1, 2006; 2005 Pub.Acts, c. 412, § 1, eff. July 1, 2005; 2007 Pub.Acts, c. 552, § 1, eff. July 1, 2007; 2011 Pub.Acts, c. 483, § 2, eff. July 1, 2011.

Formerly § 37-251.

[Notes of Decisions \(9\)](#)

T. C. A. § 37-1-153, TN ST § 37-1-153

Current with laws from the 2016 Second Reg. Sess., eff. through February 1, 2016

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West's Tennessee Code Annotated

Title 40. Criminal Procedure

Chapter 29. Restoration of Citizenship

Part I. General Provisions

T. C. A. § 40-29-107

§ 40-29-107. Certificate of employability

Effective: April 28, 2014

Currentness

(a) Any person who has had or is seeking to have the person's rights of citizenship restored pursuant to this part may also petition the court for a certificate of employability as provided in this section.

(b) A petition for employability shall be filed with the same court as the petition for restoration of citizenship rights as provided in § 40-29-105.

(c) The petitioner shall pay the costs of this application.

(d) The administrative office of the courts shall create a standard certificate of employability to be issued by the court and a standard petition for employability form to be used to petition the court for a certificate of employability. The form for the petition shall be placed on the web site of the administrative office of the courts. The form for the petition shall include places for all the information specified in subsection (e).

(e) A petition for employability filed by a person under this section shall include all of the following:

(1) The person's name, date of birth, and social security number;

(2) All aliases of the person and all social security numbers associated with those aliases;

(3) The person's address of residence, including the city, county, state, and zip code;

(4) The length of time that the person has been a resident of this state, expressed in years and months of residence;

(5) A summary of the person's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;

(6) A summary of the person's employment history, specifying the name of, and dates of employment with, each employer and the positions held;

(7) Verifiable references and endorsements;

(8) The name of one (1) or more immediate family members of the person, or other persons with whom the person has a close relationship, who support the person's reentry plan; and

(9) A summary of the reason the person believes the certificate of employability should be granted.

(f) Before the petition for employability of a person rendered infamous or deprived of the rights of citizenship by the judgment of a state court is heard, the district attorney general in whose county the petitioner currently resides and the district attorney general of the county in which the petitioner was convicted shall have twenty (20) days' notice of the petition in order that, if deemed advisable, each may resist. The United States attorney and the district attorney general in whose district the petitioner currently resides shall be given notice of the petition and shall be given the same opportunity to resist, as afforded the United States attorney and the district attorney general when the petitioner was rendered infamous or deprived of the rights of citizenship by the judgment of a federal court.

(g) The district attorney general of the county in which the petitioner was convicted that receives notification of the filing of a petition for a certificate of employability under this section shall notify any known victims of crimes perpetrated by the petitioner by sending notice of the filing of the petition to the last known address of such victims, if known.

(h) A court that receives a person's petition for employability pursuant to this section shall review the person's petition, the person's criminal history, filings submitted by any district attorney general, United States attorney, or victim of crimes perpetrated by the petitioner, and all other relevant evidence. The court may order any report, investigation, or disclosure by the person that the court believes is necessary for the court to reach a decision on whether to approve the person's petition for a certificate of employability.

(i) The court may issue a certificate of employability, at the court's discretion, if the court finds that the person has established all of the following by a preponderance of evidence:

(1) The petitioner has sustained the character of a person of honesty, respectability, and veracity and is generally esteemed as

such by the petitioner's neighbors;

(2) Granting the petition will materially assist the person in obtaining employment or occupational licensing;

(3) The person has a substantial need for the relief requested in order to live a law-abiding life; and

(4) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

(j) If the court grants the petition for employability, a certificate of employability shall be given to the petitioner for use in obtaining employment.

(k)(1) If the court denies the petition, the court shall provide notice to the petitioner of the court's denial. The court may place conditions on the petitioner regarding the petitioner's filing of any subsequent petition for a certificate of employability. The court shall notify the petitioner of any conditions placed on the petitioner's filing of a subsequent petition for a certificate of employability.

(2) If the court denies the petition, the petitioner may appeal the decision to the court of appeals only if the petitioner alleges that the denial was an abuse of discretion on the part of the court.

(l) A certificate of employability issued under this section shall be presumptively revoked if the person to whom the certificate of employability was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of employability.

(m)(1) If a person presents a valid certificate of employability, no board, agency, commission, or other licensing entity that issues, restores or renews licenses or certificates and regulates occupations and trades for which a license or certificate is required to do business in this state shall deny the issuance, restoration or renewal of an occupational license or certificate based solely on the person's past record of criminal activity but instead shall consider on a case-by-case basis whether to grant or deny the issuance, restoration or renewal of an occupational license or an employment opportunity.

(2) Any rule of a board, agency, commission, or other licensing entity in effect on April 28, 2014, with respect to the denial or refusal to issue, restore or renew the license or certificate of a person who has a past record of criminal activity shall control if the applicant does not possess a certificate of employability.

(3) However, if a person seeking the issuance, restoration or renewal of a license or certificate, does possess a certificate of

employability, it shall preempt any present rule that authorizes or requires the denial or refusal to issue, restore or renew a license or certificate if the denial is based upon the person's past record of criminal activity.

(4) Notwithstanding subdivision (m)(1) or (m)(3), a board, agency, commission, or other licensing entity may adopt a rule on or after April 28, 2014, denying the issuance, restoration or renewal of a license or certificate to a person, notwithstanding the person's possession of a certificate of employability, based on:

(A) The time that has elapsed since the criminal offense; or

(B) The nature of the offense having a direct bearing on the fitness or ability of the person to perform one (1) or more of the duties or responsibilities necessarily related to the license or certificate sought.

(n)(1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of employability issued to a person pursuant to this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of employability issued to a person pursuant to this section shall provide immunity for the employer with respect to the claim if the employer knew of the certificate at the time of the alleged negligence.

(3) An employer who hires a person who has been issued a certificate of employability under this section may be held liable in a civil action based on or relating to the retention of the person as an employee only if:

(A) The person, after being hired, subsequently demonstrates danger or is convicted of a felony;

(B) The person is retained by the employer as an employee after the demonstration of danger or the conviction;

(C) The plaintiff proves by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of the felony; and

(D) The employer, after having actual knowledge of the employee's demonstration of danger or conviction of a felony, was willful in retaining the person as an employee.

(4) The provisions of § 1-3-119 relative to implied rights of action shall apply to this section.

(o) Nothing in this section shall be construed to apply to a person or entity subject to licensing, certification or regulation by any board, commission, or agency pursuant to title 33, chapter 2, part 4; title 38, chapter 8; titles 41, 49, 56, 63 and 71; or persons subject to regulation by the department of financial institutions pursuant to title 45 and title 56, chapter 37.

Credits

2014 Pub.Acts, c. 815, § 1.

T. C. A. § 40-29-107, TN ST § 40-29-107

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