



State of Tennessee

PUBLIC CHAPTER NO. 539

HOUSE BILL NO. 888

By Representatives Curcio, Lamberth, Doggett, Dixie, Sherrell, Parkinson, Hardaway, Freeman, Chism, Towns, Lamar, Smith, Thompson, Mannis, Camper, Clemmons, Weaver, Powell, Jernigan

Substituted for: Senate Bill No. 675

By Senators Haile, Akbari, Campbell, Gilmore, Yarbro

AN ACT to amend Tennessee Code Annotated, Section 8-21-401 and Title 40, relative to expunction.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-21-401, is amended by deleting subdivision (d)(2), substituting the following, and redesignating the subsequent subdivisions accordingly:

(2) The clerk shall charge a fee of one hundred dollars (\$100) for proceedings related to a violation of probation or any post-judgment actions other than expunctions.

(3) The clerk may charge a fee of up to one hundred dollars (\$100) for expunctions.

SECTION 2. Tennessee Code Annotated, Section 8-21-401, is amended by deleting subdivision (g)(5) and substituting:

(5) The clerk may charge a fee of up to one hundred dollars (\$100) for expunctions.

SECTION 3. Tennessee Code Annotated, Section 40-6-203(b)(2), is amended by deleting the language "in conformance with Rule 3" and substituting the language "in conformance with § 40-6-204 and Rule 3".

SECTION 4. Tennessee Code Annotated, Section 40-6-204, is amended by designating the current language as subsection (a) and adding the following as a new subsection:

(b) The affidavit of complaint must contain instructions informing the defendant that if the defendant's charge is dismissed, a no true bill is returned by a grand jury, the defendant is arrested and released without being charged with an offense, or the court enters a nolle prosequi in the defendant's case, the defendant is entitled, upon petition by the defendant to the court having jurisdiction over the action, to the removal and destruction of all public records relating to the case without cost to the defendant.

SECTION 5. Tennessee Code Annotated, Section 40-32-101(a)(1)(B), is amended by deleting the language "the appropriate clerk's fee pursuant to § 8-21-401" and substituting the language "the appropriate clerk's fee pursuant to § 8-21-401, if applicable,".

SECTION 6. Tennessee Code Annotated, Section 40-32-101(g)(1), is amended by deleting the language "For purpose of this subsection (g)" and substituting the language "Except as provided in SECTION 14, as used in this subsection (g)".

SECTION 7. Tennessee Code Annotated, Section 40-32-101(g)(1)(A), is amended by deleting the language "and sentenced to imprisonment for a term of three (3) years or less for an offense".

SECTION 8. Tennessee Code Annotated, Section 40-32-101(g)(1)(A), is amended by adding the following as new subdivisions:

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() Section 39-14-152 – Use of a counterfeit mark or logo;

() Section 39-14-903 – Money laundering offenses;

SECTION 9. Tennessee Code Annotated, Section 40-32-101(g)(1)(B)(xi), is amended by deleting the subdivision and substituting:

(xi) Section 39-13-514(b)(3)(A) - Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability;

SECTION 10. Tennessee Code Annotated, Section 40-32-101(g)(1)(D), is amended by deleting the subdivision, substituting the following, and redesignating the subsequent subdivision appropriately:

(D) A person who was convicted of one (1) of the following Class D felonies committed on or after November 1, 1989:

(i) Section 39-14-103 – Theft of property;

(ii) Section 39-14-104 – Theft of services;

(iii) Section 39-14-112 – Extortion;

(iv) Section 39-14-114 – Forgery;

(v) Section 39-14-115 – Criminal simulation;

(vi) Section 39-14-118 – Illegal possession or fraudulent use of credit card or debit card;

(vii) Section 39-14-121 – Worthless checks;

(viii) Section 39-14-130 – Destruction of valuable papers;

(ix) Section 39-14-133 – False or fraudulent insurance claims;

(x) Section 39-14-137 – Fraudulent qualifying for set-aside programs;

(xi) Section 39-14-138 – Theft of trade secrets;

(xii) Section 39-14-139 – Sale of recorded live performances without consent;

(xiii) Section 39-14-147 – Fraudulent transfer of motor vehicle valued at twenty thousand dollars (\$20,000) or more;

(xiv) Section 39-14-149 – Communication theft;

(xv) Section 39-14-150(b) – Identity theft;

(xvi) Section 39-14-152 – Use of a counterfeit mark or logo;

(xvii) Section 39-14-154 – Home improvement fraud;

(xviii) Section 39-14-402 – Burglary - other than habitation or automobile;

(xix) Section 39-14-408 – Vandalism;

(xx) Section 39-14-602(a)–(c) – Violation of Tennessee Personal and Commercial Computer Act;

(xxi) Section 39-14-603 – Unsolicited bulk electronic mail;

(xxii) Section 39-16-502(a)(1) or (a)(2) – False report to law enforcement not involving bomb, fire, or emergency;

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(xxiii) Section 39-17-417(d) – Manufacture, deliver, sale, or possession of Schedule III drug (fine not greater than fifty thousand dollars (\$50,000));

(xxiv) Section 39-17-417(e) – Manufacture, deliver, sale, or possession of Schedule IV drug (fine not greater than fifty thousand dollars (\$50,000));

(xxv) Section 39-17-417(g)(2) – Manufacture, deliver, sale, or possession of certain Schedule VI drugs (fine not greater than fifty thousand dollars (\$50,000));

(xxvi) Section 39-17-430 – Prescribing or selling steroid for unlawful purpose;

(xxvii) Section 39-17-433 – Promoting manufacture of methamphetamine;

(xxviii) Section 39-17-438 – Produce, manufacture, delivery, sale, or possession of hallucinogenic plant *salvia divinorum* or the synthetic cannabinoids (first violation);

(xxix) Section 39-17-454(c) – Manufacture, deliver, dispense, sell, or possess with intent to manufacture, deliver, dispense, or sell a controlled substance analogue (first violation);

(xxx) Section 39-17-607(a) – Making counterfeit or altering lottery ticket (fine not greater than fifty thousand dollars (\$50,000));

(xxxi) Section 39-17-608 – Making material false statement on lottery application or record;

(xxxii) Section 39-17-654(c) – Unauthorized person conducting charitable gaming event; and

(xxxiii) Section 53-11-402(a)(3) – Drug fraud;

(E) A person who was convicted of one (1) of the following Class C felonies committed on or after November 1, 1989:

(i) Section 39-14-103 – Theft of property;

(ii) Section 39-14-104 – Theft of services;

(iii) Section 39-14-114 – Forgery;

(iv) Section 39-14-115 – Criminal simulation;

(v) Section 39-14-118 – Illegal possession or fraudulent use of a credit card or debit card;

(vi) Section 39-14-121 – Worthless checks;

(vii) Section 39-14-130 – Destruction of valuable papers;

(viii) Section 39-14-133 – Fraudulent or false insurance claims;

(ix) Section 39-14-137 – Fraudulent qualifying for set-aside programs;

(x) Section 39-14-138 – Theft of trade secrets;

(xi) Section 39-14-139 – Sale of recorded live performances without consent;

(xii) Section 39-14-149 – Communication theft;

(xiii) Section 39-14-150(c) – Identity theft trafficking;

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- (xiv) Section 39-14-152 – Use of a counterfeit mark or logo;
- (xv) Section 39-14-154 – Home improvement fraud;
- (xvi) Section 39-14-408 – Vandalism;
- (xvii) Section 39-14-602(b)(5) – Violation of Tennessee Personal and Commercial Computer Act;
- (xviii) Section 39-14-603 – Unsolicited bulk electronic mail;
- (xix) Section 39-14-804 – Theft of animal from or damage to an animal facility;
- (xx) Section 39-17-417(c) – Manufacture, deliver, sale, or possession of Schedule II drug, including cocaine or methamphetamine in an amount less than point five (0.5) grams (fine not greater than one hundred thousand dollars (\$100,000));
- (xxi) Section 39-17-417(e) – Manufacture, deliver, sale, or possession of flunitrazepam (fine not greater than one hundred thousand dollars (\$100,000));
- (xxii) Section 39-17-417(g)(3) – Manufacture, deliver, sale, or possession of Schedule VI controlled substance (fine not greater than one hundred thousand dollars (\$100,000));
- (xxiii) Section 39-17-454(c) – Manufacture, delivery, dispense, or sale or possession with the intent to manufacture, deliver, dispense, or sale of a controlled substance analogue (second or subsequent violation); and
- (xxiv) Section 39-17-607(b) – Influencing or attempting to influence lottery; or

SECTION 11. Tennessee Code Annotated, Section 40-32-101(g)(2)(B), is amended by deleting the subdivision and substituting:

- (B) At the time of the filing of the petition for expunction at least:
 - (i) Five (5) years have elapsed since the completion of the sentence imposed for a misdemeanor or Class E felony; or
 - (ii) Ten (10) years have elapsed since the completion of the sentence imposed for a Class C or D felony;

SECTION 12. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivision (g)(4) and substituting:

- (4)
 - (A) Both the petitioner and the district attorney general may file evidence with the court relating to the petition.
 - (B) The district attorney general may file evidence relating to the petition under seal for review by the court. Evidence filed under seal by the district attorney general is confidential and is not a public record.

SECTION 13. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivision (g)(5) and substituting:

- (5)
 - (A) The court shall enter an order granting or denying the petition no sooner than sixty-one (61) days after service of the petition upon the district attorney general. Prior to entering an order on the petition, the court shall review and consider all evidence submitted by the petitioner and the district attorney

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general, including any evidence submitted by the district attorney general under seal pursuant to subdivision (g)(4)(B).

(B) In making a decision on the petition, the court shall weigh the interest of the petitioner against the best interests of justice and public safety; provided, that if the petitioner is an eligible petitioner pursuant to subdivision (g)(1)(A), (g)(1)(B), (g)(1)(C), (g)(1)(D), or (g)(1)(E) and meets the requirements of subdivision (g)(2), then there is a rebuttable presumption that the petition should be granted.

SECTION 14. Tennessee Code Annotated, Section 40-32-101(g), is amended by adding the following as a new subdivision:

() A person is not an eligible petitioner for purposes of this subsection (g) if the person was convicted of an offense involving the manufacture, delivery, sale, or possession of a controlled substance and at the time of the offense the person held:

(A) A commercial driver license, as defined in § 55-50-102, and the offense was committed within a motor vehicle, as defined in § 55-50-102; or

(B) Any driver license and the offense was committed within a commercial motor vehicle, as defined in § 55-50-102.

SECTION 15. Tennessee Code Annotated, Section 40-32-101(i), is amended by deleting the language "the appropriate court clerk's fee pursuant to § 8-21-401" and substituting the language "the appropriate court clerk's fee pursuant to § 8-21-401, if applicable,".

SECTION 16. Tennessee Code Annotated, Section 40-32-101(k)(1)(C), is amended by deleting the subdivision and substituting:

(C) At the time of the filing of the petition for expunction at least:

(i) Five (5) years have elapsed since the completion of the sentence imposed for the most recent offense, if the offenses were both misdemeanors or a Class E felony and a misdemeanor; and

(ii) Ten (10) years have elapsed since the completion of the sentence imposed for the most recent offense, if one (1) of the offenses was a Class C or D felony; and

SECTION 17. This act takes effect July 1, 2021, the public welfare requiring it.

HOUSE BILL NO. 888

PASSED: May 5, 2021



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES



RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 25th day of May 2021



BILL LEE, GOVERNOR