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Expunging Court Records

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Several statutes in Tennessee law provide for parties to have records of judicial proceedings involving them expunged from the records of the court and certain other offices.

The basic statute for expunction of criminal offense records is found in T.C.A. § 40-32-101. This statute allows individuals to have their records expunged if they are not convicted of any crime. The statute also allows for expungements of charged offenses if the individual was not convicted of the charged offense, even if they are convicted of another offense, so long as the only offense the individual was convicted of was a traffic offense. Additionally, subsection (j) allows an individual to apply for expungement of records from electronic databases relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. Finally, subsection (g) allows for the expungement of certain less serious convictions under certain circumstances if the individual pays the required statutory fees.

The law provides that the record to be expunged "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." Court cases have also determined that physical evidence is not addressed by the expungement statutes; and therefore, cannot be expunged. *State v. Powell*, 1999 WL 512072 (Tenn. Ct. App. July 21, 1999, permission to appeal denied January 24, 2000).

In cases of judicial diversion, there is separate statutory authority for expunging records. T.C.A. § 40-35-313. In those circumstances, a person who had charges dismissed through judicial diversion may apply to the court to expunge all official records other than certain non-public records that are kept solely to determine whether the person is eligible for diversion in the future. The application for expungement shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that the charges against such person were dismissed and the proceedings discharged, it shall enter such order. The effect of such order is to restore the person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

Other statutes authorize expunction in cases that were dismissed through pre-trial diversion under a memoranda of understanding, T.C.A. § 40-15-105, or in cases where the governor declares the defendant exonerated. T.C.A. § 40-27-109.

In cases where the criminal record is expunged, certain information must be reported to the Tennessee Bureau of Investigation (TBI) to be maintained in its expunged criminal offender and pretrial diversion database. T.C.A. § 38-6-118.

In addition to courts with criminal jurisdiction, the primary statute on expunging criminal offenses explicitly states that it applies to juvenile courts. T.C.A. § 40-32-101(a)(4). Additionally, Juveniles who have their driving record suspended can apply to have that record expunged once they reach 18 years of age and have their license reinstated. T.C.A. § 55-10-711.

Outside of the criminal setting, parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may file an agreed sworn petition signed by both parties and notarized, requesting expungement of their divorce records. T.C.A. § 36-4-127. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of \$50 for performing such clerk's duties under this section.

Other less commonly used statutory provisions allow for the expunction of affidavits of heirship from the register of deeds office, T.C.A. § 30-2-712, and records of proceedings related to the appointment of a fiduciary where none was appointed. T.C.A. § 34-1-124. Also, records of military discharge may be expunged by registers of deeds from their records upon application by proper parties T.C.A. § 10-7-513.

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