

EXPUNCTION NOTIFICATION

Reference document required to assist judges in complying with T.C.A. § 40-35-324

AT TIME OF EXPUNCTION – PLEASE BE SURE THAT ALL OFFENSES ARE ELIGIBLE BEFORE ISSUING ORDER

TCA 40-35-324 – IF PRACTICABLE, a judge shall, at the time of sentencing, notify a person convicted of an offense that is eligible for expunction of:

- (1) The person's eligibility to have all public records of the conviction destroyed in the manner set forth in 40-32-101; and**

ALL MISDEMEANORS committed on or after Nov. 1, 1989—EXCLUDING THE LIST BELOW—are eligible for expunction. TCA 40-32-101(g)(1)(B).

EXCLUDED MISDEMEANORS ARE AS FOLLOWS:

1. Section 39-13-101(a)(1) and (2)—Assault, if committed prior to July 1, 2000;
2. Section 39-13-102--Aggravated assault of public employee;
3. Section 39-13-111--Domestic assault;
4. Section 39-13-113(g)--Violation of protective or restraining order;
5. Section 39-13-113(h)--Possession of firearm while order of protection in effect;
6. Section 39-13-511--Public indecency 3rd or subsequent offense;
7. Section 39-13-511--Indecent exposure (victim under 13 years of age) or by person in penal institution exposing to a guard;
8. Section 39-13-526(b)(1) and (2)--Violation of community supervision by sex offender not constituting offense or constituting misdemeanor;
9. Section 39-13-528--Soliciting minor to engage in Class E sexual offense;
10. Section 39-13-509--Unlawful sexual contact by authority figure;
11. 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;
12. Section 39-14-304--Reckless burning;
13. 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;
14. Section 39-15-201(b)(3)--Coercion--abortion;
15. Section 39-15-210--Third or subsequent violation of Child Rape Protection Act of 2006;
16. Section 39-15-401(a)--Child abuse (where child is between ages 7-17);
17. Section 39-15-401(b)--Child neglect and endangerment (where child is between ages 7-13);
18. Section 39-15-404--Enticing a child to purchase intoxicating liquor--purchasing alcoholic beverage for child;
19. Section 39-15-404--Allowing person ages 18-21 to consume alcohol on person's premises;
20. Section 39-15-414--Harboring or hiding a runaway child;
21. Section 39-17-315--Stalking;
22. 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;
23. Section 39-17-437--Using substance or device to falsify drug test results and selling synthetic urine;
24. Section 39-17-438--Possession of the hallucinogenic plant *Salvia Divinorum* or the synthetic cannabinoids;
25. Section 39-17-452--Sale or possession of synthetic derivatives or analogues of methcathinone;
26. Section 39-17-902(a)--Importing, preparing, distributing, processing, or appearing in obscene material or Class A misdemeanors;
27. Section 39-17-907--Unlawful exhibition of obscene material;
28. Section 39-17-911--Sale or loan to minors of harmful materials;
29. Section 39-17-918--Unlawful massage or exposure of erogenous areas;

30. Section 39-17-1307(f)(1)(A)--Possession of firearm after being convicted of misdemeanor crime of domestic violence;
31. Section 39-17-1307(f)(1)(B)--Possession of firearm while order of protection is in effect;
32. Section 39-17-1307(f)(1)(C)--Possession of firearm while prohibited by state or federal law;
33. Section 39-17-1312--Failure of adult to report juvenile carrying gun in school;
34. Section 39-17-1320(a) --Nonparent providing handgun to a juvenile;
35. Section 39-17-1352--Failure to surrender handgun carry permit upon suspension;
36. Section 39-17-1363--Violent felon owning or possessing vicious dog;
37. Section 39-13-101(a)(3)--Assault (offensive or provocative physical contact);
38. Section 39-13-511(a)--Public indecency--first or second offense (punishable by \$500 fine only);
39. Section 39-13-511(b)(2)--Indecent exposure (victim 13 years old or older);
40. Section 39-15-412(b)--Disseminating smoking paraphernalia to minor after 3 prior violations;
41. Section 39-16-404--Misuse of official information by public servant;
42. Section 39-17-317--Disorderly conduct at funerals;
43. Section 39-17-715--Possession of or consuming alcoholic beverages on K-12 school premises;
44. Section 39-17-914--Display for sale or rental of material harmful to minors; and
45. Section 55-10-401--Driving under the influence of an intoxicant;

The following Class C felonies, committed on or after November 1, 1989, are ELIGIBLE FOR EXPUNCTION:

1. Section 39-14-103 - Theft of property;
2. Section 39-14-104 - Theft of services;
3. Section 39-14-114 - Forgery;
4. Section 39-14-115 - Criminal simulation;
5. Section 39-14-118 - Illegal possession or fraudulent use of a credit card or debit card;
6. Section 39-14-121 - Worthless checks;
7. Section 39-14-130 - Destruction of valuable papers;
8. Section 39-14-133 - Fraudulent or false insurance claims;
9. Section 39-14-137 - Fraudulent qualifying for set-aside programs;
10. Section 39-14-138 - Theft of trade secrets;
11. Section 39-14-139 - Sale of recorded live performances without consent;
12. Section 39-14-149 - Communication theft;
13. Section 39-14-150(c) - Identity theft trafficking; 3 HB888
14. Section 39-14-152 - Use of a counterfeit mark or logo;
15. Section 39-14-154- Home improvement fraud;
16. Section 39-14-408 - Vandalism;
17. Section 39-14-602(b)(5) - Violation of Tennessee Personal and Commercial Computer Act;
18. Section 39-14-603 - Unsolicited bulk electronic mail;
19. Section 39-14-804 - Theft of animal from or damage to an animal facility;
20. 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));
21. Section 39-17-417 (e) - Manufacture, deliver, sale, or possession of flunitrazepam (fine not greater than one hundred thousand dollars (\$100,000));
22. Section 39-17-417(9)(3) - Manufacture, deliver, sale, or possession of Schedule VI controlled substance (fine not greater than one hundred thousand dollars (\$100,000));
23. 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
24. Section 39-17-607(b) - Influencing or attempting to influence lottery

The following Class D felonies, committed on or after November 1, 1989, are ELIGIBLE FOR EXPUNCTION:

1. Section 39-14-103 - Theft of property;

2. Section 39-14-104 - Theft of services;
3. Section 39-14-112 - Extortion;
4. Section 39-14-114 - Forgery;
5. Section 39-14-115 - Criminal simulation;
6. Section 39-14-118 - Illegal possession or fraudulent use of credit card or debit card;
7. Section 39-14-121 - Worthless checks;
8. Section 39-14-130 - Destruction of valuable papers;
9. Section 39-14-133 - False or fraudulent insurance claims;
10. Section 39-14-137 - Fraudulent qualifying for set-aside programs;
11. Section 39-14-138 - Theft of trade secrets;
12. Section 39-14-139 - Sale of recorded live performances without consent;
13. Section 39-14-147 - Fraudulent transfer of motor vehicle valued at twenty thousand dollars (\$20,000) or more;
14. Section 39-14-149 - Communication theft;
15. Section 39-14-150(b) - Identity theft;
16. Section 39-14-152 - Use of a counterfeit mark or logo;
17. Section 39-14-154 - Home improvement fraud;
18. Section 39-14-402 - Burglary - other than habitation or automobile;
19. Section 39-14-408 - Vandalism;
20. Section 39-14-602(a)-(c) - Violation of Tennessee Personal and Commercial Computer Act;
21. Section 39-14-603 - Unsolicited bulk electronic mail. ,
22. Section 39-16-502(a)(1) or (a)(2) - False report to law enforcement not involving bomb, fire, or emergency; 2 HB888
23. Section 39-17-417(d) - Manufacture, deliver, sale, or possession of Schedule III drug (fine not greater than fifty thousand dollars (\$50,000));
24. Section 39-17-417(e) - Manufacture, deliver, sale, or possession of Schedule IV drug (fine not greater than fifty thousand dollars (\$50,000));
25. 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));
26. Section 39-17-430 - Prescribing or selling steroid for unlawful purpose;
27. Section 39-17-433 - Promoting manufacture of methamphetamine;
28. Section 39-17-438 - Produce, manufacture, delivery, sale, or possession of hallucinogenic plant salvia divinorum or the synthetic cannabinoids (first violation);
29. 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);
30. Section 39-17-607(a) - Making counterfeit or altering lottery ticket (fine not greater than fifty thousand dollars (\$50,000));
31. Section 39-17-608 - Making material false statement on lottery application or record;
32. Section 39-17-654(c) - Unauthorized person conducting charitable gaming event; and
33. Section 53-11-402(a)(3) - Drug fraud;

The following Class E felonies, committed on or after November 1, 1989, are ELIGIBLE FOR EXPUNCTION:

1. Section 39-11-411--Accessory after the fact;
2. Section 39-13-306--Custodial interference where person not voluntarily returned by defendant;
3. Section 39-13-604(c)(2)--Knowing dissemination of illegally recorded cellular communication;
4. Section 39-14-105(a)(2)--Theft;
5. Section 39-14-114(c)--Forgery;
6. Section 39-14-115--Criminal simulation;
7. Section 39-14-116(c)--Hindering secured creditors;
8. Section 39-14-117(b)--Fraud in insolvency;
9. Section 39-14-118--Fraudulent use of credit card or debit card;
10. Section 39-14-121--Worthless checks;
11. Section 39-14-130--Destruction of valuable papers;
12. Section 39-14-131--Destruction or concealment of will;

13. Section 39-14-133--Fraudulent or false insurance claim;
14. Section 39-14-137(b)--Fraudulent qualifying for set aside programs;
15. Section 39-14-138--Theft of trade secrets;
16. Section 39-14-139--Sale of recorded live performances without consent;
17. Section 39-14-143--Unauthorized solicitation for police, judicial, or safety associations;
18. Section 39-14-147(f)--Fraudulent transfer of motor vehicle with value of less than \$20,000;
19. Section 39-14-149--Communication theft (fine only);
20. Section 39-14-154--Home improvement fraud;
21. Section 39-14-402--Burglary of an auto;
22. Section 39-14-408--Vandalism;
23. Section 39-14-411--Utility service interruption or property damage;
24. Section 39-14-505--Aggravated criminal littering (2nd and 3rd offenses involving certain weight or volume);
25. Section 39-14-602--Violation of Tennessee Personal and Commercial Computer Act;
26. Section 39-14-603--Unsolicited bulk electronic mail;
27. Section 39-16-201--Taking telecommunication device into penal institution;
28. Section 39-16-302--Impersonation of licensed professional;
29. Section 39-16-603--Evading arrest in motor vehicle where no risk to bystanders;
30. Section 39-16-609(e)--Failure to appear (felony);
31. Section 39-17-106--Gifts of adulterated candy or food;
32. Section 39-17-417(f)--Manufacture, delivery, sale, or possession of Schedule V drug (fine not greater than \$5,000);
33. Section 39-17-417(g)(1)--Manufacture, delivery, sale, or possession of not less than one-half ounce (½ oz.) and not more than ten pounds (10 lbs.) of Schedule VI drug marijuana (fine not greater than \$2,500);
34. Section 39-17-417(h)--Manufacture, delivery, sale or possession of Schedule VII drug (fine not greater than \$1,000);
35. Section 39-17-418(e)--Simple possession or casual exchange (3rd offense);
36. Section 39-17-422(c)--Selling glue for unlawful purpose;
37. Section 39-17-423(c)--Counterfeit controlled substance;
38. Section 39-17-425(b)(1), (2), (3)--Unlawful drug paraphernalia uses and activities;
39. Section 39-14-152 – Use of a counterfeit mark or logo;
40. Section 39-14-903 – Money laundering offenses.

Felony or Misdemeanors committed PRIOR TO NOVEMBER 1, 1989 ARE ELIGIBLE IF:

1. 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
2. The offense for which the person was convicted did not:
 - a. contain an element of use, attempted use, or threat of physical force
 - b. involve, by its nature, a substantial risk that physical force would be used in the course of committing the offense
 - c. involve use or possession of a deadly weapon
 - d. involve a sex offense which would require the offender to register as a sex offender under TCA 40-39-2
 - e. involve sex offense involving a minor
 - f. result in the death, serious bodily injury, or bodily injury to a person
 - g. involve the use of alcohol or drugs and a motor vehicle
 - h. involve the sale or distribution of a schedule I or II controlled substance
 - i. involve a minor as the victim of the offense
 - j. result in causing the victim or victims to sustain a loss of \$60k or more

PLEASE NOTE - Multiple offenses arising from same criminal episode.

TCA 40-32-101(g)(1)(F) - Multiple, eligible offenses will be treated as one for the purposes of expunction if the conduct upon which the conviction is based:

- occurred contemporaneously,

- occurred at the same location,
- represented a single continuous criminal episode with a single criminal intent

PLEASE NOTE – *Subsequent ineligible conviction.*
PC677 (2022) – allows an offense to be expunged with a subsequent, ineligible offense.

PLEASE NOTE – *No more than 2 convictions.*
TCA 40-32-101(k)(1). An “eligible petitioner” is a person who was convicted of no more than 2 offenses.

PLEASE NOTE - *Separate convictions.*
TCA 40-32-101(k)(1)(B). Someone may petition to have 2 misdemeanors OR 1 misdemeanor and 1 felony expunged if both offenses are eligible under subsection (g). Notwithstanding (g).

(2) The time period after which the person can petition for expunction of the offense. TCA 40-32-101(g)(2)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

Other circumstances you may need to consider:

(1) Petition for expunction of certain offenses committed by a victim of human trafficking

TCA 40-32-105

PC1033 (2022) removes a conviction for prostitution as a requirement for a person to be eligible for expunction of multiple, nonviolent convictions of offenses that resulted from the person’s status as a victim of human trafficking.

(2) Offense while protesting or challenging a state law or municipal ordinance whose purpose was to maintain or enforce racial segregation or racial discrimination.

TCA 40-32-101(f)(1)

ELIGIBILITY: 37+ years must elapse from the date of conviction.

(3) Controlled substance convictions are not eligible if commercial vehicle involved:

TCA 40-32-101(g) [new subsection]

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.

(4) Multiple Convictions – one being Drug Fraud

TCA 40-32-101(k)(1)(C)

At the time of the filing of the petition, eligible if:

- (i) Five 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 years have elapsed since the completion of the sentence imposed for the most recent offense, if one of the offenses was a Class C or D felony