

TN law allows some felons a second chance

Starting July 1, some one-time offenders will have right to expunge conviction

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A second chance

Beginning July 1, certain one-time offenders will be able to have their charge expunged from their record. In general, a person can have been convicted of only one, nonviolent Class E felony charge or a single misdemeanor charge. Certain crimes such as domestic assault and driving under the influence are not eligible to be expunged. For the first time in Tennessee, some one-time, nonviolent offenders will have the right to expunge their felony conviction, forever erasing that criminal record.

A bill signed into law last month, and effective July 1, allows some offenders to expunge a select set of felonies and misdemeanors for a fee, after meeting all court requirements. The law applies only to offenders with a single conviction.

The economy has already proven a powerful incentive for people to have their records expunged. As people lost jobs over the past few years, they found that criminal records often prevented them from finding work, particularly as more people vied for a smaller pool of positions. State and local officials say that economic pressure is responsible for a surge in expungements over the last five years, from roughly 23,000 in 2007 to more than 39,000 in 2011.

Loosening the restrictions is expected to shatter all records, with a stunning 60,000 additional requests each year, according to a fiscal analysis of the approved bill.

“These things are life-altering. It is just devastating to apply to a job, to try to get many things, primarily economic,” said Nashville criminal defense attorney David Raybin, who handles expungement and felons’ rights restoration cases. “The United States is the land of the second chance, that’s what we’re about. To permanently brand somebody with something like this to where it destroys their ability to work or go to school, there’s no reason for it anymore.”

Conviction stood

Until this law was passed, a conviction was permanent, absent an executive exoneration from the governor. Expungement was available only for those not guilty or whose charges were dropped or for those sentenced to judicial diversion, a process by which offenders can clear their names after meeting all of their court-mandated requirements.

Tennessee is set to join at least 17 other states that have some mechanism for first-time offenders to expunge a criminal charge, according to a study by the University of Cincinnati Law Review.

Under the new law, offenders can only have a single criminal conviction, must wait 5 years after all court requirements have been fulfilled and then must pay \$350 to apply to have their one charge expunged. Offenders must apply in the county where they are convicted and after a hearing before a judge, where prosecutors could conceivably present evidence in opposition to the removal of a charge.

Most of the felonies eligible to be expunged are property crimes like theft and vandalism where the goods stolen are worth less than \$1,000. Some minor drug charges, such as felony simple possession, are also eligible to be expunged.

Most misdemeanors are eligible, with the exception of convictions for violent crimes like assault and domestic assault, some weapons charges, child neglect and molestation charges and DUIs.

The bill passed handily, but not without much discussion and some opposition.

State Sen. Jack Johnson, R-Franklin, said he wasn't opposed to the idea in spirit, but was uncomfortable with some details in the bill.

"It wasn't necessarily an easy vote for me because I do believe in second chances. But I just don't like that it includes a few things that I thought should not be expunged," he said. "I thought it was a little broad, included some things I wasn't comfortable with."

He pointed to a handful of felony charges that could be expunged that he thought shouldn't be, including forgery up to \$1,000, auto burglaries and felony vandalism with damages up to \$999.

"Being labeled as a felon? That's pretty serious stuff and that could haunt a 22-year-old kid for the rest of their lives. I don't have a problem showing some compassion for that," he said. "But this bill went a little further than that."

Gun rights a factor

Raybin said that a secondary effect of the new law is that some felons will have their rights — including the right to have a gun — restored when their crimes are expunged. Raybin said that most of the clients who approach him about felony rights are specifically interested in having their gun rights restored.

"It is tremendous the number of people who can't have a firearm because of a conviction," he said.

Raybin is currently suing the state on behalf of a Franklin man who was pardoned in Georgia and had his gun rights restored there, but was denied a gun permit in Tennessee because his original charge was drug-related. Tennessee bars violent and drug felons from possessing guns. He said the new law is not only just, but will also benefit the state economically by removing barriers to employment for those who have made a mistake in their past.

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