

## INCLUSION LIST

**A Class E felony committed on or 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 on or 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(a)(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 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 (2<sup>nd</sup> and 3<sup>rd</sup> 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); (amended 7/1/14)
- 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 (3<sup>rd</sup> 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 on or after November 1, 1989, and is on this list, then that conviction cannot be expunged.

- 39-13-101(a)(1) and (2) Assault;
- 39-13-101(a)(3) Assault (offensive or provocative physical contact)
- 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) and (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 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 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;

**EXCLUSION LIST (cont.)**

- 39-17-1352 Failure to surrender handgun carry permit upon suspension;
- 39-17-1363 Violent felon owning or possessing vicious dog;
- 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.

### **DRUG FRAUD CONVICTION – PURSUANT TO § 53-11-402(a)(3) (amended 7/1/15)**

“Eligible Petitioner” means:

A person who was convicted of drug fraud pursuant to Section 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.