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**OFFICE OF THE
DISTRICT ATTORNEY GENERAL**

**14TH JUDICIAL DISTRICT
STATE OF TENNESSEE**

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July 6, 2012

Corbin Carson
Cronkite School of Journalism
Arizona State University
555 N. Central Avenue
Phoenix, AZ 85004

Re: Inquiry of Stephen K. Doig
Voter Fraud

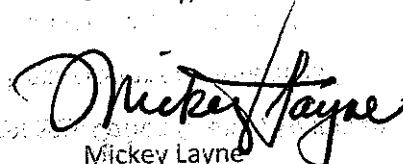
Dear Mr. Carson:

I am enclosing copies of the indictment, plea of guilty, judgment order, T.C.A. 2-19-107, and T.C.A. 40-35-313, as to State of Tennessee vs Mary Lou Simpson, Coffee County, Tennessee, Circuit Court no. 34,144F. Defendant entered a plea of guilty to Illegal Attempt to Vote in violation of T.C.A. 2-19-107 on August 26, 2005. She was then placed on probation for a period of two (2) years with the judgment of conviction deferred for that period. Defendant was then eligible for a dismissal upon compliance with probationary terms. The election involved was primarily Bush v. Kerry.

I have been a prosecutor in this office since March 1, 1975. This is the only election fraud prosecution that I recall in Coffee County to this date.

If you need further information or assistance, feel free to contact me.

Sincerely,


Mickey Layne

CML/shd

Enclosure: Copies of indictment, plea of guilty, judgment order, T.C.A. 2-19-107, and T.C.A. 40-35-313.

STATE OF TENNESSEE, COFFEE COUNTY
JANUARY SESSION OF THE GRAND JURY, 2005

No. SI-F 34,144

STATE OF TENNESSEE

vs.

MARY LOU SIMPSON

ILLEGAL ATTEMPT TO VOTE

A TRUE BILL

John A. March

Foreman, Grand Jury

NAME(S) OF PROSECUTOR(S)

KENDALL BARHAM

Prosecutor(s)

NAMES OF WITNESSES HEARD BY GRAND
JURY

KENDALL BARHAM

Were duly summoned as witnesses and sworn by me,
and testified before the Grand Jury on this Indictment.

John A. March

Foreman, Grand Jury

THE CLERK will issue summons for the following State
Witnesses:


KENDALL BARHAM - TBI
CONNIE CASTEEL - ADM. OF ELECTIONS 723-5103
DONNA MARCOM - COFFEE CO. ELECTION
COMMISSION 723-5103
GLADYS LOWRY - 723-5103
ROSA WELLS - 723-5103
JENNIFER BATCHELOR - 723-5103
SHERRY SPEARS - 723-5103
BROOK THOMPSON - COORD. OF ELECTIONS, 312
8TH AVE. N., WILLIAM R. SNODGRASS TOWER, 9TH
FLOOR, NASHVILLE 37243 615-741-7956

Michael Wayne

Attorney General

COUNT 1

THE GRAND JURORS of COFFEE County, Tennessee, duly impaneled and sworn upon their oath present that **MARY LOU SIMPSON** on the _____ day of OCTOBER, 2004, in COFFEE County, Tennessee, and before the finding of this indictment, unlawfully, intentionally, and knowing that she was not entitled to, did attempt to vote in a manner where or when such person was not entitled to under the law, in violation of T.C.A. 2-19-107 and against the peace and dignity of the State of Tennessee.


 DISTRICT ATTORNEY GENERAL
 FOURTEENTH JUDICIAL DISTRICT

CRIM

Code _____

Number _____ Filing Date 01/11

s Name **MARY LOU SIMPSON**

urity Number 415-60-2616

FLING:

ment, Indictment, or Information ☐ Appeal from I
 on Violation ☐ Other (Petition, Motion, or Writ)

T.C.A. Section

Offense*
 Type Class
 (a/b) (A-B)

2	1	9	1	0	7	F	E

Offense" please enter one of the following: in the first block, please enter the letter corresponding to the class of the offense. Murder, you would enter "P" in the first block and "M" in the block of Judgment", please enter one of the following codes: 1-Accusations, 6-Transfer to Another Court/Renamed, 7-Pre-Trial

Date: _____

Judge: _____

IN THE CIRCUIT COURT FOR THE 14TH JUDICIAL DISTRICT
SITTING IN MANCHESTER, COFFEE COUNTY, TENNESSEE

FILED

STATE OF TENNESSEE

VS.

CASE NO. 34,144F

AUG 26 2005

MARY LOU SIMPSON

CIRCUIT COURT
COFFEE COUNTY, TN
HEATHER HINDS DUNCAN, CLERK
TIME AM/PM

PLEA OF GUILTY AND ACKNOWLEDGMENT AND WAIVER OF RIGHTS

The defendant, MARY LOU SIMPSON in his/her own proper person and with his/her counsel, comes before the Court and represents that he/she has been fully advised by his/her counsel, the Honorable TOM PARSONS of:

1. The charge(s) against him/her as set forth in the indictment, the State's burden of proof and the defenses available to him/her, if any.
2. The range of punishment, if found guilty of said charge(s).
3. The right to confront witnesses who might testify against him/her at trial and to have compulsory process for obtaining witnesses in his/her favor.
4. His/Her right to a trial by jury and of appeal of any adverse verdict at trial.
5. His/Her right to have a jury determine any sentence enhancing/mitigating factors.
6. His/Her right to not testify at trial which could not be held against him/her should he/she exercise the same, but that upon entry of a plea of guilty in this case, that right or privilege against self-incrimination is also waived.
7. That the conviction(s) resulting from the plea(s) of guilty to the offense(s) set forth below may be used to enhance the offense charged and/or the punishment for the same in subsequent criminal proceedings against him/her.

The defendant further represents and states to the Court that he/she has discussed with his/her attorney of record the facts and law relative to this case and that his/her attorney is thoroughly competent and has fully protected all of his/her rights.

After being so informed of all of his/her rights and the same being fully explained by the Court in the presence of counsel, the defendant states that he/she understands all of his/her Constitutional Rights, knowingly waives all of the above stated rights and still desires, with the agreement of his/her attorney and the concurrence of the District Attorney General to voluntarily and knowingly enter a plea of guilty to the offense of: ILLEGAL ATTEMPT TO VOTE - T.C.A. 2-19-107 and that he/she elects to waive jury trial for any purpose and desires to submit this case to the Court without intervention of a jury pursuant to the applicable statutes as to the questions of guilt and punishment. The defendant further agrees to accept the punishment recommended by the State or to be imposed by the Court and agrees that the facts of the case as stated by the District Attorney General, and as alleged in the indictment(s), are true and are to be stipulated as being the substantial facts and evidence in this case which establish a factual basis for the defendant's plea and may be considered by the Court as such facts and evidence.

The defendant represents and states further to the Court that he/she does not desire to file a motion for new trial or file an appeal in this cause and agrees, upon conferring with counsel, that there is no basis for an appeal as there are no errors in the record of this case.

ENTER this the 24 day of AUGUST, 2005.

Mary Simpson
Defendant

Tom Parsons
Counsel for Defendant

Attest:

Felicia B. Welby
Assist. District Attorney General

Entered 8:26-05

Minute Book 236

Page 77-78

CERTIFICATE OF JUDGE

I hereby certify that the above named defendant, being represented by the above named attorney, a member in good standing of the Tennessee Bar, pleaded guilty disposing of this cause without intervention of a trial or sentencing jury pursuant to the applicable statutes to the offense(s) as shown above after a full explanation of his/her rights was made to him/her in open court and a knowing and voluntary waiver of those rights.

This the 26 day of Aug, 2005.

John W. Pollin
Circuit Judge

CASE # C11-86A-000003

RI #6

IN THE CRIMINAL/CIRCUIT COURT OF COFFEE COUNTY, TENNESSEE

Case Number: 34,144F Count#: 1 Attorney for the State FELICIA B. WALKUP
Judicial District 14 Judicial Division _____ Counsel for Defendant TOM PARSONS

State of Tennessee

vs. MARY LOU SIMPSON Alias _____
Defendant _____

Date of Birth 04/17/1941 Sex M Race White SSN 415-60-2616 AUG 26 2005

Indictment Filing Date / / TDOC # _____ TBI Document Control # _____

CIRCUIT COURT
COFFEE COUNTY, TN
HEATHER HINDS DUNCAN, CLERK
TIME _____ AM/PM

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.

On the 26 day of August, 2005, the defendant:

<input type="checkbox"/> Pled Guilty <input type="checkbox"/> Nolo Contendere <input checked="" type="checkbox"/> Guilty Plea - Pursuant to 40-35-313 Is found: <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Not Guilty by Reason of Insanity <input type="checkbox"/> Bench Trial	<input type="checkbox"/> Dismissed/Nolle Prosequi <input type="checkbox"/> Retired/Unapprehended Defendant <input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Repeat Violent 100% <input type="checkbox"/> 1st Degree Murder <input type="checkbox"/> School Zone <input type="checkbox"/> Gang Related	Indictment: Class(circle one) 1st A B C D <u>E</u> <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Offense: <u>ILLEGAL ATTEMPT TO VOTE</u> Amended Charge _____ Offense date <u>10/14/2004</u> County <u>COFFEE</u> Conviction offense <u>DEFERRED</u> TCA#: _____ Sentence-imposed date <u>/ /</u> Conviction: Class(circle one) 1st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
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After considering the evidence, the entire record, and all factors in T.C.A. Title 40, Chapter 35, all of which are incorporated by reference herein, the Court's findings & rulings are:

Sentence Reform Act of 1989 Offender Status (Check One) <input type="checkbox"/> Mitigated <input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Standard <input type="checkbox"/> Mitigated 30% <input type="checkbox"/> Multiple <input type="checkbox"/> Standard 30% <input type="checkbox"/> Persistent <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Career <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Repeat Violent <input type="checkbox"/> Career 60% <input type="checkbox"/> Violent 100%	Concurrent with: Consecutive to: Pretrial Jail Credit Period(s): From <u>/ /</u> to <u>/ /</u> From <u>/ /</u> to <u>/ /</u> From <u>/ /</u> to <u>/ /</u> From <u>/ /</u> to <u>/ /</u>
Sentenced to: <input type="checkbox"/> TDOC <input type="checkbox"/> County Jail <input type="checkbox"/> Workhouse Sentenced Length: _____ Years _____ Months _____ Days _____ Hours _____ Week-ends <input type="checkbox"/> Life <input type="checkbox"/> Life w/out Parole <input type="checkbox"/> Death Mandatory Minimum Sentence Length (<u>39-17-417, 39-13-513, 39-13-514</u> in School Zone or <u>55-10-401 - DUI 4th Offense</u>) Period of Incarceration to be Served Prior to Release on Probation: _____ Months _____ Days _____ Hours _____ Weekends Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only) Alternative Sentence: <input checked="" type="checkbox"/> Probation <input checked="" type="checkbox"/> Diversion <input type="checkbox"/> Community Based Alternative- Specify _____ <u>2</u> Years _____ Months _____ Days Effective: _____	Court Ordered Fees and Fines: \$ _____ Criminal Injuries Compensation Fund \$ _____ Sex Offender Tax \$ _____ Court Costs Cost To Be Paid By <input type="checkbox"/> Defendant <input type="checkbox"/> State \$ _____ Fine Assessed \$ _____ Other: _____ Restitution: Victim Name _____ Address _____ Total Amount \$ _____ Per Month \$ _____ <input checked="" type="checkbox"/> Unpaid Community Service: <u>100</u> Hours _____ Days _____ Weeks _____ Months

☐ The Defendant having been found guilty is rendered infamous and is ordered to provide a biological specimen for the purpose of DNA analysis.
☐ Pursuant to 39-13-524 the defendant is sentenced to community supervision for life following sentence expiration.

Special Conditions: ☐ DEFENDANT'S PUBLIC SERVICE WORK SHALL BE A CONDITION OF HER PROBATION. AS A CONDITION OF DEFENDANT'S PLEA, SHE SHALL WITHIN 30 DAYS OF THE ENTRY OF HER PLEA VOLUNTARILY PURGE HER NAME FROM THE VOTER REGISTRY IN COFFEE COUNTY AND REMAIN PURGED UNTIL JANUARY OF 2009.

John W. Rollins, Part II

Judge's Name

Judge's Signature

Date of Entry of Judgment

Attorney for State/Signature (optional)

Defendant's Attorney/Signature (optional)

RDA 1167

Cross-References. Penalty for Class D felony, § 40-35-111.

Collateral References. Violations of election laws ⇐ 144.309-332.

2-19-107. Illegal registration or voting. — A person commits a Class E felony who:

(1) Intentionally and knowing that such person is not entitled to, registers or votes in any manner or attempts to register or vote in any manner where or when such person is not entitled to under this title; or

(2) Votes in the primary elections of more than one (1) political party on the same day. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 2; T.C.A., § 2-1907; Acts 1989, ch. 591, § 11.]

Cross-References. False entries, § 2-19-109.

Penalty for Class E felony, § 40-35-111.

Section to Section References. This section is referred to in § 2-2-106.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 27.

Cited: State v. Johns, — S.W.3d —, 2002 Tenn. Crim. App. LEXIS 1120 (Tenn. Crim. App. Dec. 31, 2002).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Sufficiency of indictment and proof.
2. Mistake of fact.
3. Completion of act of voting.
4. Voting more than once.
5. Election of United States representatives.
6. Primary elections.

1. Sufficiency of Indictment and Proof.

Indictment for illegal voting must charge the precise facts which disqualify the voter, and a charge that the defendant was not then and there a qualified voter in the county is insufficient. *Pearce v. State*, 33 Tenn. 63, 60 Am. Dec. 135 (1853).

In an indictment for illegal voting, the allegation, "he, the defendant, not being then and there a qualified voter in said county," is but a conclusion, it being necessary to allege the facts which disqualified the voter. *Pearce v. State*, 33 Tenn. 63, 60 Am. Dec. 135 (1853).

The indictment need not charge illegal vote knowingly cast, but the charge that it was illegally cast is sufficient, because knowledge is implied in the word "illegally"; but the state must prove on the trial that the defendant knowingly cast the illegal vote, or it must appear that in law he was chargeable with knowledge of the facts which made his vote illegal. *State v. Haynorth*, 35 Tenn. 64 (1855).

2. Mistake of Fact.

If the defendant was honestly mistaken in the existence of a state of facts which would make him a legal voter, he will be excused, as where he believed that he was 18 years of age. But if he knew his age, but honestly believed

that, under the law, he was entitled to vote at the age of 18, he will be guilty of illegal voting. *McGuire v. State*, 26 Tenn. 54 (1846).

3. Completion of Act of Voting.

The act of voting is completed when the voter has deposited his ballot with the officer holding the election, and his name is announced and registered by the clerks with the sanction of the judges, and if the ballot is never passed into the box it is nonetheless a vote. *Steinwehr v. State*, 37 Tenn. 586 (1858).

4. Voting More Than Once.

The offense of "voting more than once" is committed by a person who knowingly deposits two or more folded tickets at one and the same time and place, whether they are ever passed into the box or not; and it is for the jury to determine whether such act was done by mistake or design. *Steinwehr v. State*, 37 Tenn. 586 (1858).

5. Election of United States Representatives.

Congress has, by various acts, so far adopted the election laws of the several states as to make all frauds and offenses committed against those laws offenses against the United States, when committed in any election in which a representative in congress is to be voted for. *United States v. Carpenter*, 41 F. 330 (C.C.D. Tenn. 1889).

6. Primary Elections.

Although many of the penal statutes relating to elections were enacted before primary election laws were adopted, the 1932 Code made them applicable to all elections. *State v. Matthews*, 173 Tenn. 302, 117 S.W.2d 2 (1939).

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DECISIONS UNDER PRIOR LAW

1. Municipal Elections.

It was formerly held that it was not an indictable offense to vote illegally for the offic-

ers of a municipal corporation. State v. Liston, 28 Tenn. 603 (1849).

Collateral References. Violations of election laws ⇨ 144.309-332.

2-19-108. Unlawful possession of official registration or election supplies. — A person who knowingly possesses any official registration or election supplies, except as required or permitted by this title, commits a Class E felony. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 3; T.C.A., § 2-1908; Acts 1989, ch. 591, § 12.]

Cross-References. False entries on registration or documents, § 2-19-109.
Penalty for Class E felony, § 40-35-111.

Collateral References. Violations of election laws ⇨ 144.309-332.

2-19-109. False entries on official registration or election documents
— **Penalties.** — A person who knowingly makes or consents to any false entry on any permanent registration, poll list, election tally sheet or any other official registration or election document commits a Class E felony. [Acts 1972, ch. 740, § 1; 1975, ch. 308, §§ 4, 5; T.C.A., § 2-1909; Acts 1989, ch. 591, § 13.]

Cross-References. Penalty for Class E felony, § 40-35-111.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Evidence of handwriting.
2. Assessment of penalty.

1. Evidence of Handwriting.

Failure of trial judge to finally determine the genuineness of standards of writing offered in evidence for comparison with certain names falsely registered in registration records of voters and alleged to be in the handwriting of the defendants was prejudicial error in prosecution for conspiracy to violate the statutes relating to the registration of voters. Omohundro v. State, 172 Tenn. 48, 109 S.W.2d 1159 (1937).

2. Assessment of Penalty.

In a prosecution under one count for conspiracy to procure fraudulent registration of voters, and on a second count for the procurement of fraudulent registration, where the court found the defendants guilty under both counts, and assessed their punishment under the first count at a fine of \$500 and six months' imprisonment, and under the second count a \$50 fine and 30 days' imprisonment, and provided that the punishment should be cumulative, it was proper for the trial court to eliminate the \$50 fine and 30 days' imprisonment assessed on the second count. Stanley v. State, 171 Tenn. 406, 104 S.W.2d 819 (1937).

Collateral References. 29 C.J.S. Elections § 326.

Violations of election laws ⇨ 144.309-332.

2-19-110. Abuse of voter assistance. — A person commits a Class C misdemeanor if such person assists any person in voting except as permitted

d the procedural revocation set forth in U.S. 471, 92 S. Ct. 1972 U.S. LEXIS 194 S.W.2d 395, 1980 Tenn. Crim. App.

ity at probation revocation sufficient evidence to intelligent decision. 52d 586, 1972 Tenn. Crim. App. 1972). dge of the verbatim revocation hearing, s substantial complaint that he make a vidence relied on and n revoking probation. 395, 1980 Tenn. Crim. App. 1980).

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ial judge had made a n an arbitrary judg- ant's probation was v. State, 496 S.W.2d p. LEXIS 277 (Tenn.

appellate court to be buse of discretion in a e, it must be demon-

strated that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. State v. Delp, 614 S.W.2d 395, 1980 Tenn. Crim. App. LEXIS 357 (Tenn. Crim. App. 1980).

13. Shortening Sentence.

Where convict's parole was revoked for violation of conditions, his sentence could not be shortened to reflect time spent on probation, since such time was not spent under prison-like

Collateral References. Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure. 77 A.L.R.3d 636.

Admissibility, in state probation revocation proceedings, of incriminating statement obtained in violation of Miranda Rule. 77 A.L.R.3d 669.

Availability of discovery at probation revocation hearings. 52 A.L.R.5th 559.

Power of court after expiration of probation term, to revoke or modify probation for viola-

restrictions. Young v. State, 539 S.W.2d 850, 1976 Tenn. Crim. App. LEXIS 389 (Tenn. Crim. App. 1976).

14. Weight of Findings.

The trial judge's findings in probation revocation proceedings have the weight of a jury verdict. Carver v. State, 570 S.W.2d 872, 1978 Tenn. Crim. App. LEXIS 323 (Tenn. Crim. App. 1978); State v. Delp, 614 S.W.2d 395, 1980 Tenn. Crim. App. LEXIS 357 (Tenn. Crim. App. 1980).

tions committed during the probation term. 13 A.L.R.4th 1240.

Right to assistance of counsel at proceedings to revoke probation. 44 A.L.R.3d 306.

What constitutes "good behavior" within statute or judicial order expressly conditioning suspension of sentence thereon. 58 A.L.R.3d 1156.

Who may institute proceedings to revoke probation. 21 A.L.R.5th 275.

40-35-312. Costs of revocation proceeding. — In case of a revocation of a suspension, the costs of the revocation shall be adjudged against the defendant, and the defendant shall be required to pay or secure the costs; provided, that no state and county tax nor attorney general's fee shall accrue upon hearings for the purpose of revoking the suspension. In case the suspension is not revoked upon the hearing, the costs shall be taxed against the county, if the defendant was originally convicted of a misdemeanor, and against the state, if originally convicted of a felony; provided, that, if the trial judge is of opinion that the proceedings for revocation are not made in good faith, the judge shall have the power to disallow all the costs of the case or, in the alternative, to tax them against the party making the charges against the defendant. [Acts 1989, ch. 591, § 6.]

Compiler's Notes. Former chapter 35, §§ 40-35-101 — 40-35-112, 40-35-201 — 40-35-214, 40-35-301 — 40-35-316, 40-35-401 — 40-35-403, 40-35-501 — 40-35-504 (Acts 1982, ch. 868, § 1; T.C.A., §§ 40-35-108, 40-43-101 — 40-43-104, 40-43-106, 40-43-107, 40-43-109 — 40-43-112, 40-43-201 — 40-43-205, 40-43-207 — 40-43-212, 40-43-214, 40-43-301 — 40-43-304, 40-43-306 — 40-43-309, 40-43-311 — 40-43-315, 40-43-401 — 40-43-403, 40-43-501 — 40-43-504), concerning the Tennessee Criminal

Sentencing Reform Act of 1982, was repealed by Acts 1989, ch. 591, § 6.

Cross-References. Perjury, § 39-16-702. Probation, paroles and pardons, title 40, ch. 28.

Rule Reference. This section is referred to in the Advisory Commission Comments under Rule 35 of the Tennessee Rules of Criminal Procedure.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Criminal Procedure, § 45.

40-35-313. Probation — Conditions — Discharge and dismissal — Expunction from official records. — (a)(1)(A) The court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without

entering a judgment of guilty and with the consent of the qualified defendant. The deferral shall be for a period of time not less than the period of the maximum sentence for the misdemeanor with which the person is charged or not more than the period of the maximum sentence of the felony with which the person is charged. The deferral is conditioned upon the defendant paying an amount to be determined by the court of not less than ten dollars (\$10.00) nor more than thirty-five dollars (\$35.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, and upon the defendant paying any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. The payments shall be made to the clerk of the court in which proceedings against the defendant were pending, who shall send the payments to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds as provided in this subdivision (a)(1)(A).

(B)(i) As used in this subsection (a); "qualified defendant" means a defendant who:

- (a) Is found guilty of or pleads guilty or nolo contendere to the offense for which deferral of further proceedings is sought;
- (b) Is not seeking deferral of further proceedings for a sexual offense, a violation of § 71-6-117 or § 71-6-119, or a Class A or Class B felony; and
- (c) Has not previously been convicted of a felony or a Class A misdemeanor.

(ii) As used in subdivision (a)(1)(B)(i)(b), "sexual offense" means conduct that constitutes:

- (a) Aggravated prostitution, as described in § 39-13-516;
- (b) Aggravated rape, as described in § 39-13-502;
- (c) Aggravated sexual battery, as described in § 39-13-504;
- (d) Aggravated sexual exploitation of a minor, as described in § 39-17-1004;
- (e) Attempt, as described in § 39-12-101, solicitation, as described in § 39-12-102 or conspiracy, as described in § 39-12-103, to commit any of the offenses enumerated in this subdivision (a)(1)(B)(ii);
- (f) Especially aggravated sexual exploitation of a minor, as described in § 39-17-1005;
- (g) Rape, as described in § 39-13-503;
- (h) Rape of a child, as described in § 39-13-522;
- (i) Sexual battery by an authority figure, as described in § 39-13-527;
- (j) Sexual exploitation of a minor, as described in § 39-17-1003; or
- (k) Statutory rape by an authority figure, as described in § 39-13-532.

(2) The provisions of this subsection (a) relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided.

If, during the conditions of the discharge the charge and discharge, but a not court solely for in subsequent the limited punishment dismissal shall disabilities imposed except as provided in this subsection

(3)(A) No or probation as or after July Tennessee has a prior felony proceedings subsection (a) a violation neglect or in § 68-11- provision the hearing the registry governor department

(B) The (a)(3)(A) is offender as from deferred Class A misdemeanor defendant be the duty inquiry into

(b) Upon against the person an order to enter to be retained defined in § indictment or pursuant to from probation shall be expunged was a sexual a notation by the entry of the person's name it shall enter

If, during the period of probation, the person does not violate any of the conditions of the probation, then upon expiration of the period, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this subsection (a) is without court adjudication of guilt, but a nonpublic record of the discharge and dismissal is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this subsection (a) or for the limited purposes provided in subsections (b) and (c). The discharge and dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsections (b) and (c). Discharge and dismissal under this subsection (a) may occur only once with respect to any person.

(3)(A) No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court on or after July 1, 1998, unless there is attached to it a certificate from the Tennessee bureau of investigation stating that the defendant does not have a prior felony or Class A misdemeanor conviction. No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in § 68-11-1004(a) on or after July 1, 2004, unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by § 68-11-1004 a copy of which shall be forwarded to the department of health.

(B) The certificate provided by the bureau pursuant to subdivision (a)(3)(A) is only a certification that according to its expunged criminal offender and pretrial diversion database the defendant is not disqualified from deferral and probation under this section by virtue of a prior felony or Class A misdemeanor conviction. The certificate is not a certification that the defendant is eligible for the deferral and probation, and it shall continue to be the duty of the district attorney general, and judge to make sufficient inquiry into the defendant's background to determine eligibility.

(b) Upon the dismissal of the person and discharge of the proceedings against the person under subsection (a), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the court under subsection (a) and the public records that are defined in § 40-32-101(b), all recordation relating to the person's arrest, indictment or information, trial, finding of guilty and dismissal and discharge pursuant to this section; provided, that no records of a person who is dismissed from probation and whose proceedings are discharged pursuant to this section shall be expunged if the offense for which deferral and probation was granted was a sexual offense as defined by § 40-39-202. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expunction. If the court determines, after hearing, that the person was dismissed and the proceedings against the person discharged, it shall enter the order. The effect of the order is to restore the person, in the

contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person as to whom the order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge the arrest, or indictment or information, or trial in response to any inquiry made of the person for any purpose, except when the person who has been availed of the privileges of expunction then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding any provision of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the nonpublic records are admissible for the following purposes:

(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and

(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the nonpublic records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction.

(c) Notwithstanding the provisions of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, a plea of guilty or a verdict of guilty by a judge or jury for a criminal felony offense involving an act of terrorism or any other felony offense involving violence, coercion, dishonesty or the disruption of the operations of a state or local government is admissible into evidence in a civil action for the purpose of impeaching the truthfulness, veracity or credibility of a witness if the plea or verdict occurred within ten (10) years of the date the evidence is sought to be admitted and the witness is a party to the civil action. The plea or verdict is admissible for the purposes set out in this subsection (c) notwithstanding the fact that the public records of the plea or verdict have been expunged pursuant to this section either prior to or after the commencement of the civil action at which the plea or verdict is sought to be admitted. In addition, the nonpublic records retained by the court, Tennessee bureau of investigation or a local law enforcement agency shall constitute official records of plea or verdict and are subject to the subpoena power of the courts of civil jurisdiction.

(d)(1) Any court dismissing charges against a person and ordering the expunction of a person's public records following the discharge of proceedings pursuant to this section after October 1, 1998, shall send or cause to be sent a copy of the dismissal and expunction order to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial diversion database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal and expunction order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor. The order shall contain the name of the person seeking dismissal and expunction, the person's date of birth and social security number, the offense that was dismissed and the date the dismissal and expunction order is entered.

(2) A defendant applying to a court for expunction of the defendant's records following successful completion of the diversion program authorized by this

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section shall be assessed a fifty dollar (\$50.00) fee. The fee shall be transmitted by the clerk of the court to the state treasurer for deposit in the special fund established in § 40-32-101(d). [Acts 1989, ch. 591, § 6; 1990, ch. 980, §§ 25, 26; 1995, ch. 349, § 1; 1996, ch. 997, § 1; 1997, ch. 455, § 2; 1997, ch. 456, § 2; 1998, ch. 1099, §§ 8-10; 2000, ch. 645, § 2; 2000, ch. 813, § 7; 2002, ch. 849, §§ 14-16; 2003, ch. 323, § 2; 2004, ch. 780, § 9; 2006, ch. 973, § 3; 2007, ch. 528, § 2; 2007, ch. 536, § 1.]

Sentencing Commission Comments. This section permits disposition of misdemeanors and certain felonies to include probation with the possibility of dismissal and expungement if the defendant successfully complies with the terms of probation. The eligibility criteria are set forth in subdivision (a)(1) and provide that the defendant cannot have a prior record for any felony conviction or for any Class A misdemeanor convictions. The provisions of this section apply to all misdemeanors except for driving under the influence and driving on a cancelled, suspended or revoked license. See §§ 55-10-403(b)(1) and 55-50-504(f).

Compiler's Notes. Former chapter 35, §§ 40-35-101 — 40-35-112, 40-35-201 — 40-35-214, 40-35-301 — 40-35-316, 40-35-401 — 40-35-403, 40-35-501 — 40-35-504 (Acts 1982, ch. 868, § 1; T.C.A., §§ 40-35-108, 40-43-101 — 40-43-104, 40-43-106, 40-43-107, 40-43-109 — 40-43-112, 40-43-201 — 40-43-205, 40-43-207 — 40-43-212, 40-43-214, 40-43-301 — 40-43-304, 40-43-306 — 40-43-309, 40-43-311 — 40-43-315, 40-43-401 — 40-43-403, 40-43-501 — 40-43-504), concerning the Tennessee Criminal Sentencing Reform Act of 1982, was repealed by Acts 1989, ch. 591, § 6.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 subsequent legislation.

Cross-References. Confidentiality of public records, § 10-7-504.

Destruction or release of records, § 40-32-101.

Penalty for Class A, B or C misdemeanor, § 40-35-111.

Penalty for Class A or B felony, § 40-35-111.

Section to Section References. This section is referred to in §§ 8-21-409, 16-3-810, 33-6-118, 39-13-532, 39-13-709, 39-17-417, 39-17-420, 39-17-1324, 40-15-105, 40-15-106, 40-24-108, 40-32-101, 40-35-104, 40-39-202, 40-39-212.

Textbooks. Tennessee Criminal Practice and Procedure (Raybin), §§ 11.3, 11.4, 22.103.

Law Reviews. The Tennessee Pretrial Diversion Act: A Practitioner's Guide (Steven W. Feldman), 13 Mem. St. U.L. Rev. 285 (1983).

Attorney General Opinions. Effective date of subdivision (a)(3)(A) as October 1, 1998; OAG 98-166 (8/28/98), 1998 Tenn. AG LEXIS 166.

Collection of supervision fee by private probation service, OAG 99-029 (2/17/99).

Peace officers standards and training (POST) pre-employment requirements, OAG 00-026 (2/15/00).

A trial judge may not entertain any ex parte actions regarding judicial diversion or expungement pursuant to T.C.A. § 40-35-313, OAG 02-099 (9/16/02).

While a trial court may retain the power to alter or amend a defendant's sentence after 30 days, it has no authority to expunge a defendant's criminal record pursuant to T.C.A. § 40-35-313 if the defendant has not been sentenced pursuant to the terms of that section and a valid judgment of conviction is in effect, OAG 02-099 (9/16/02).

A court is not authorized to enter an order of diversion without first receiving a certificate from the Tennessee bureau of investigation stating that defendant does not have a prior felony or Class A misdemeanor conviction, OAG 04-009 (1/27/04).

The date the order is entered with the Tennessee bureau of investigation certificate attached is the effective date of the diversion, OAG 04-009 (1/27/04).

DUI conviction cannot be expunged through a pretrial diversion program or through judicial diversion, OAG 05-041 (4/5/05).

Pretrial diversion and judicial diversion are available to defendants only as prejudgment procedures, OAG 06-008 (1/10/06).

Cited: State v. Carr, 861 S.W.2d 850, 1993 Tenn. Crim. App. LEXIS 230 (Tenn. Crim. App. 1993); State v. Smith, 909 S.W.2d 471, 1995 Tenn. Crim. App. LEXIS 566 (Tenn. Crim. App. 1995); State v. Evitts, 915 S.W.2d 468, 1995 Tenn. Crim. App. LEXIS 867 (Tenn. Crim. App. 1995); State v. Cutshaw, 967 S.W.2d 332, 1997 Tenn. Crim. App. LEXIS 1237 (Tenn. Crim. App. 1997); State v. Head, 971 S.W.2d 49, 1997 Tenn. Crim. App. LEXIS 795 (Tenn. Crim. App. 1997); State v. Lewis, 978 S.W.2d 558, 1997 Tenn. Crim. App. LEXIS 1105 (Tenn. Crim. App. 1997); State v. Johnson, 15 S.W.3d 515, 1999 Tenn. Crim. App. LEXIS 957 (Tenn. Crim. App. 1999); State v. Turco, 108 S.W.3d 244, 2003 Tenn. LEXIS 574 (Tenn. 2003); State v. Mathes, 114 S.W.3d 915, 2003 Tenn. LEXIS 724 (Tenn. 2003); Bd. of Prof'l Responsibility v. Love, 256 S.W.3d 644, 2008 Tenn. LEXIS 323 (Tenn. May 12, 2008); State v. Carter, — S.W.3d —, 2008 Tenn. Crim. App. LEXIS 160 (Tenn. Crim. App. Feb. 21, 2008); State v. Gifford, —

June 25, 2012

Greetings:

I am working with a journalism project that is focused on voting participation issues in the United States. One of the issues we plan to address is the incidence of voting fraud across the country. To that end, this letter is a request for information about cases of vote fraud in your district.

Specifically, we are seeking the kind of information that was released in March by Texas Attorney General Greg Abbott's office. This information included the following detail on all voting fraud cases prosecuted in Texas since 2000:

- County/city
- Defendant's full name
- Allegation
- Election involved
- Case number
- Charges
- Resolution date
- Election code violated
- Disposition (plea, convicted, acquitted, sentence/fine, etc.)

I have already inquired with Tennessee's Attorney General's Office, which referred me to contact all of the state's District Attorneys to find the information I seek. Therefore, I am asking for information similar to what Greg Abbot released about all cases of vote fraud in your district since 2000. If there have been no such prosecutions in your district since 2000, I would appreciate a letter to that effect. If your office is not the one that would have such information, I would appreciate the name and address of whichever office in your district that would track this kind of case.

Please send your reply to my reporting colleague at this address:

Corbin Carson
News21 Journalist
Corbin.Carson@News21.com
602-496-5020

Cronkite School of Journalism
Arizona State University
555 N. Central Ave.
Phoenix, AZ 85004

Thank you for your prompt attention to this request. I appreciate your time and attention in this matter.

Sincerely,

Stephen K. Doig
Professor, Knight Chair in Journalism