**S T A T E O F T E N N E S S E E**
**OFFICE OF THE**
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**NASHVILLE, TENNESSEE 37243**

December 21, 2000

Opinion No. 00-192

Right to a Jury Trial for Class C Misdemeanant

## QUESTIONS

1. Whether a defendant charged with a class C misdemeanor has a right to a jury trial?

2. If yes, is there any way to restrict this right through a court policy?

## OPINION

1. It is the opinion of this Office that a defendant charged with a class C misdemeanor has a constitutionally protected right to a jury trial that may be relinquished only by a valid written waiver.

2. No. The right to trial by jury cannot be restricted by a court policy.

## ANALYSIS

1. A defendant has a constitutional right to a jury trial "For violations of general criminal statutes...where a fine of more than $50.00 or any confinement of the accused may be imposed." *State v. Dusina*, 764 S.W.2d 766, 768 (Tenn. 1989); *Willard v. State*, 174 Tenn. 642, 645, 130 S.W.2d 99, 100 (1939). This right is guaranteed by both the federal and state constitutions, and may be relinquished only by a valid written waiver. U.S. Const., Amend. 6; Tenn. Const. Art. I, §6; *See also* Tenn. R. Crim. P. 5(c)(2).

Under Tenn. Code Ann. § 40-35-111(e)(3), a class C misdemeanor carries a possible term of imprisonment of not more than thirty (30) days and/or a fine not to exceed $50.00. Since a defendant charged with a class C misdemeanor could potentially receive a term of confinement, the right to a trial by jury is constitutionally mandated. Any attempt to restrict this fundamental right would violate both the United States and Tennessee Constitutions.

It is therefore our opinion that a defendant charged with a class C misdemeanor has a

constitutionally protected right to a jury trial negated only by a valid written waiver.

2. As explained above, a defendant has a constitutional right to a jury trial where a fine of more than $50.00 or any confinement of the accused may be imposed. *State v. Dusina*, 764 S.W.2d 766, 768 (Tenn. 1989)(emphasis added). The scope of punishment for an offense is set by the legislature. *See, State v. Davis*, 940 S.W.2d 558, 561 (Tenn. 1997). For class C misdemeanors, the legislature has established a possible term of imprisonment of not more than 30 days. Tenn. Code Ann. §40-35-111(e)(3). It is that potential for incarceration that entitles a defendant to a jury trial. A court cannot, by court rule or otherwise, interfere with the legislature's authority to set out the scope of punishment.

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