

**STATE OF TENNESSEE**

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February 12, 2004

Opinion No. 04-024

Effect of Public Chapter No. 175 of the Acts of 2003 on Expungement of Records in Criminal Cases.

**QUESTION**

Does Public Chapter No. 175 of the Acts of 2003, amending Tenn. Code Ann. § 40-32-101(a)(1) as to the expungement of records in criminal cases, apply only to “sexual offenses” under Tenn. Code Ann. § 40-39-102(5) or to all expungeable cases?

**OPINION**

Public Chapter No. 175 applies to all expungeable cases under Tenn. Code Ann. § 40-32-101(a)(1) and not just to “sexual offenses” defined under Tenn. Code Ann. § 40-39-102(5).

**ANALYSIS**

Prior to the General Assembly’s enactment of Public Chapter No. 175, Tenn. Code Ann. § 40-32-101(a)(1) read as follows:

All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury, and all public records of a person who was arrested and released without being charged, shall, upon petition by that person to the court having jurisdiction in such previous action, be removed and destroyed without cost to such person; however, the cost for destruction of records shall apply where the charge or warrant was dismissed in any court as a result of the successful completion of diversion program according to §§ 40-15-102 - 40-15-105; provided, that such cost for destruction shall not exceed twenty-five dollars (\$25.00); provided, that the records of a person who successfully completes a diversion program pursuant to §§ 40-15-102 - 40-15-105 shall not be removed and destroyed pursuant to this section if the offense for which prosecution was suspended was a sexual offense as defined by § 40-39-102(3) [now § 40-39-102(5)].

In Public Chapter No. 175 of the Acts of 2003, the General Assembly added the following language to the end of the statute:

; provided however, when a defendant in a case has been convicted of any offense or charge, including a lesser included offense or charge, the defendant shall not be entitled to expungement of the records or charges in such case pursuant to this part.

The question now presented is whether this most recent amendment applies over all expungeable cases under Tenn. Code Ann. § 40-32-101(a)(1) or just to “sexual offenses” defined under Tenn. Code Ann. § 40-39-102(5) and mentioned in the last phrase of Tenn. Code Ann. § 40-32-101(a)(1).

“When the language contained within the four corners of a statute is plain, clear and unambiguous, the duty of the courts is simple and obvious, to say *ex scripta*, and obey it.” *Kradel v. Piper Industries Inc.*, 60 S.W.3d 744, 749 (Tenn. 2001). Here, Tenn. Code Ann. § 40-32-101(a)(1) delineates the general provision of law that public records relating to a defendant’s arrest and charge in a criminal case are expungeable, at no cost to the defendant, if the case is dismissed, if no true bill of indictment is returned or if the defendant is found not guilty at a jury trial. The statute then limits this general rule for cases dismissed upon a defendant’s completion of pre-trial diversion, in which case a defendant seeking expungement must pay up to \$25 in costs. The statute then further narrows this exception, such that public records for a “sexual offense” dismissed by pre-trial diversion are not expungeable at all. Public Chapter No. 175 now follows these limitations to the general rule under Tenn. Code Ann. § 40-32-101(a)(1) to state definitively that a defendant may not secure expungement if the defendant is convicted of “any offense or charge, including a lesser included offense or charge.”

The only reasonable interpretation is that Public Chapter No. 175 pertains to and further limits the general rule as to all expungeable offenses and does not simply modify the last phrase of Tenn. Code Ann. § 40-32-101(a)(1) disallowing expungement for “sexual offenses” dismissed by pretrial diversion. In fact, there would be no need for Public Chapter No. 175 if it only related to “sexual offenses,” since present law expressly forbids expungement if a defendant is convicted of such an offense or if a defendant receives dismissal of such a case under pretrial diversion.

The primary purpose of statutory construction is “to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995). According to the Fiscal Note prepared for the Senate and House bills that became Public Chapter No. 175, this amendment “is in response to [the] Supreme Court decision in *State v. Adler*.” In *State v. Adler*, 92 S.W.3d 397 (Tenn. 2002), the Supreme Court applied Tenn. Code Ann. § 40-32-101 in a criminal case where the grand jury indicted the defendant of one offense but the jury at trial convicted the defendant of a lesser included offense. The Supreme Court determined that Tenn. Code Ann. § 40-32-101(a) authorizes expungement of any records relating to the greater, indicted offense if the defendant is merely convicted of the lesser included offense. Public Chapter No. 175 now clearly purports to override that decision by clarifying under Tenn. Code Ann. § 40-32-101(a)(1) that the records in any criminal case are not expungeable if the defendant is convicted of any offense under the indictment, be it the indicted offense or a lesser included offense.

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