

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

April 20, 2005

Opinion No. 05-051

Constitutionality of SB 79/ HB 581 Under the Equal Protection Clauses of the United States Constitution and the Tennessee Constitution

---

**QUESTION**

Does SB 79/HB 581, authorizing a trial court to sentence a defendant convicted of first offense driving under the influence of an intoxicant (DUI) to pick up litter for 48 hours instead of serving 48 hours of incarceration, violate Article I, § 8, and Article XI, § 8, of the Tennessee Constitution or the Fourteenth Amendment of the United States Constitution?

**OPINION**

No. SB 79/HB 581 does not implicate state and federal constitutional equal protection guarantees because it does not create a legislative classification between those first time DUI offenders who are sentenced to 48 hours of incarceration and the first time DUI offenders sentenced to 48 hours of roadside cleanup. All first time DUI offenders are eligible for consideration of the alternative sentence.

**ANALYSIS**

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution mandates that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Article I, § 8, of the Tennessee Constitution states that “no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.” Article XI, § 8, reads as follows:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

The Tennessee Supreme Court has held that Article I, § 8, and Article XI, § 8, of the Tennessee Constitution provide the same protections as the Equal Protection Clause of the Fourteenth Amendment. *State v. Tester*, 879 S.W.2d 823, 827 (Tenn. 1994).

These equal protection constitutional provisions guarantee that “all persons similarly circumstanced shall be treated alike.” *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993). Depending on the nature of the right assertedly violated by a differentiating legislative classification, one of the following three standards of scrutiny are used to review the legality of the classification: (1) strict scrutiny, (2) heightened scrutiny, or (3) reduced scrutiny applying the rational basis test. *State v. Robinson*, 29 S.W.3d 476, 481 (Tenn. 2000).

It is the opinion of this Office that SB 79/ HB 581 does not raise any equal protection problem. This bill would authorize a court sentencing a criminal defendant for first offense DUI to require the defendant to complete 48 hours of roadside litter cleanup in lieu of the 48 hours of incarceration required as a minimum sentence under present law. This request asks if the bill would violate equal protection because “some convicted DUI offenders will serve jail time and some will pick up litter for forty-eight hours.” However, any defendant convicted of first offense DUI could request from the convicting court a sentence of 48 hours of roadside cleanup instead of 48 hours of incarceration. SB 79/ HB 581 would apply to any person so convicted, and any such person could petition the convicting court to impose such an alternative sentence. The bill by its terms does not discriminate among first time DUI offenders, and it does not create a legislative classification limiting its application to certain first time DUI offenders. *Cf. State v. Tester*, 879 S.W.2d 823 (Tenn. 1994) (no rational basis to support classification in statute authorizing work release in three counties for defendants convicted of second offense DUI).

SB 79/ HB 581 does not raise any equal protection concern simply because sentencing courts may sentence some offenders to 48 hours of incarcerations and others to 48 hours of roadside litter cleanup. Under the bill, “all persons similarly circumstanced” are “treated alike.” *McWherter*, 851 S.W.2d at 153.

---

PAUL G. SUMMERS  
Attorney General

---

MICHAEL E. MOORE  
Solicitor General

---

JOHN H. BLEDSOE  
Assistant Attorney General

Page 3

Requested by:

Honorable Charlotte Burks  
State Senator, 15th District  
Suite 9, Legislative Plaza  
Nashville, Tennessee 37243

Honorable Charles Curtiss  
State Representative, 43rd District  
Suite 34, Legislative Plaza  
Nashville, Tennessee 37243