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### **A Fresh Start: Tennessee Attorneys, Judges, Law Students and Court Administrators Work Toward Justice for All**

Joy Radice

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COVER STORY

# A Fresh Start

Tennessee Attorneys,  
Judges, Law Students and  
Court Administrators Work  
Toward Justice for All

**By Joy Radice**

Director of Clinical Programs, University of Tennessee College of Law  
Commissioner, Tennessee Supreme Court's Access to Justice Commission

CRIMINAL  
RECORD





**I**n March, Maria signed up to attend a free expungement clinic after she was rejected from a job because of a misdemeanor theft conviction and a dismissed simple possession case. Her old charges kept surfacing after she lost her job during the pandemic, and she struggled to support her 12-year-old son. She owed over \$1000 in court costs, her driver's license was suspended and she was staying with a friend after being evicted. Sitting down with her University of Tennessee Legal Clinic law student attorney at a Knoxville Area Urban League Expungement Clinic, Maria learned that her six-year-old theft conviction and her dismissed charge were eligible for expungement. The student drafted motions to waive her court costs and the \$100 fee to expunge the conviction. This work removed the obstacle suspending Maria's driver's license.

Maria's story is a familiar one for pro bono lawyers who have devoted countless hours to help people at expungement clinics and community courts throughout the state. Tennessee has powerful statutes that can lift barriers for people with criminal charges. For many, these laws would essentially be meaningless without free legal resources. Judges, court clerks, public defenders, district attorneys and volunteer lawyers have stepped up to fill this access to justice gap. This article outlines the relief offered by the expungement statute, describes pro bono models that have been used statewide and highlights institutional expungement innovations.

### **Tennessee's Expungement Statute**

Tennessee has long had an expungement statute — *Tenn. Code Ann.* § 40-32-101 — that focused on expunging dismissed charges.<sup>1</sup> However, in 2012, legislators added section (g) to allow one eligible conviction to be expunged after five years from the completion of the sentence.<sup>2</sup> In section (g) (1), the expungement statute lists felonies that are eligible for conviction expungement and misdemeanors that are ineligible for conviction expungement.<sup>3</sup> Multiple eligible convictions that were part of a single, continuous criminal episode are considered one conviction.<sup>4</sup>

When a charge or conviction is expunged, all public records of the matter are destroyed, and the expungement “has the legal effect of restoring the petitioner ... to the same status occupied before the arrest, indictment, information, trial or conviction.”<sup>5</sup> Once expunged, “the conviction for the expunged offense never occurred and the person shall not suffer any adverse effects or direct disabilities.”<sup>6</sup> The petitioner also cannot be guilty of perjury for denying the charge or conviction in response to a question for “any purpose,” and no collateral consequences can be “imposed or continued.”<sup>7</sup>

The Tennessee legislature has amended the statute almost every year, offering progressively greater relief for people with criminal charges. For example, in 2017, the legislature allowed the expungement of up to two eligible convictions.<sup>8</sup> The list of eligible

CONTINUED ON PAGE 20 >

felonies has increased from E felonies to include eligible C and D felonies with a lengthened waiting period of 10 years.<sup>9</sup>

A 2022 revision significantly expanded conviction eligibility. Before this amendment, if a criminal record had an ineligible conviction, no convictions could be expunged. The statute now allows individuals to expunge a conviction, even if they have been convicted of a crime that is ineligible for expungement, if the offense they are seeking to have expunged took place before the ineligible conviction.<sup>10</sup>

As the expungement statute has expanded, however, it has become more complicated to apply, making legal assistance essential.

### Pro Bono Expungement Models

Lawyers and law students have responded to this growing need for expungement assistance. Bar associations have identified expungement as a key priority of access to justice work. In 2018, the Tennessee Bar Association's Young Lawyers Division was recognized by the American Bar Association for its expungement work.<sup>11</sup> Law schools have trained students to provide pro bono assistance. I launched the first expungement clinic at the University of Tennessee College of Law so students could provide expungement assistance under the



Polk County Expungement Clinic

Tennessee Law Student Practice Rule.<sup>12</sup> Legal aid organizations and the Tennessee Alliance for Legal Services (TALS) have organized clinics, hired reentry attorneys, and recruited pro bono attorneys.

"Pro bono expungement events take a village. They require heavy lifting from court clerks who spend hours pulling criminal records and court cost data, coordination with district attorneys and judges to address legal issues, and relationships with community organizations and churches who help us register individuals before the event," explains Amber Floyd, a Commissioner on the Tennessee Supreme Court Access to Justice Commission (ATJ), who works on expungement clinics in Shelby County.

The ATJ Commission has played a central role in bringing together these necessary players. Over the past decade, expungement clinic organizers have identified the following best practices for a well-run expungement event:

1. Developing a realistic timeline by starting to plan six to eight months before the event.
2. Bringing together necessary partners: court clerks, judges, legal aid organizations, the district attorney, public defenders and community volunteers.
3. Identifying an appropriate venue like a local church or non-profit community center that offers a welcoming space for registration, confidential attorney consultations and rooms that can serve as courtrooms for judges.
4. Engaging community partners who can circulate flyers to pre-register attendees for an event and provide volunteers and refreshments for attendees.
5. Working with court clerks to pull criminal histories and court cost information beforehand.
6. Training lawyers on the intricacies of the expungement statute and providing them with templates for petitions, motions and orders.
7. Developing a standard receipt for clients that includes a summary of



Judge Donaghy speaks to clinic volunteers

the services rendered and contact information for the court clerk to follow up.

Expungement clinics must be individualized to reflect the goals and resources of a county. The ATJ Commission has organizational and legal resources to help counties organize clinics. “We can help to bring the necessary players in a county to the table and provide them with the tools they need to plan for an effective expungement event,” explains Anne-Louise Wirthlin, Director of Access to Justice for the ATJ Commission.

Four general expungement clinic models have evolved over time. The models differ in their scope, but each offers essential expungement assistance.

### **Non-Conviction Expungement and Legal Advice Clinics**

The basic expungement clinic model focuses on expunging dismissed cases and offering legal advice about potential conviction expungement. Pro bono lawyers are recruited and trained. Criminal records are pulled either through publicly available criminal history websites or with the help

of county clerks. At the event, attorneys prepare petitions to expunge dismissed cases without court costs owed and offer legal advice on expungement-eligible convictions.

A clinic like this took place last October in a church in Gallatin. It was run through the collaboration of four organizations: TALS, the Sumner County American Job Center, Legal Aid Society of Middle Tennessee and the Cumberland (LAS) and the ATJ Commission. The clinic was staffed by six attorneys and one paralegal. Thirty clients, who pre-registered for the event, were assigned a specific meeting time and their records were pulled in advance. The result: 260 non-conviction charges were expunged.

Tomi Robb, an Equal Justice Works Fellow sponsored by International Paper and hosted by TALS, helped organize the clinic and explains why these clinics are important: “Growing up I witnessed how the system fails returning citizens who have served their time. Expungement clinics give people a second chance by lifting hurdles created by former charges — hurdles to employment, stable homes and reintegration into civic and communal life.”

The ATJ Commission’s Justice Bus is



**Community Court at the Knoxville Area Urban League**

a mobile legal services center that can be parked in front of libraries or outside job fairs to offer free expungement advice and services. The Justice Bus has private interviewing spaces and is equipped with computers, printers and WiFi to allow volunteer lawyers to pull up records and offer individualized legal help.

### **Expungement Intake and Referral Services**

Expanding the advice model, Legal Aid of East Tennessee (LAET) pro bono attorney Mary Frances DeVoe has developed a model in Chattanooga by partnering with the local American Jobs Center’s One-Stop-Shop Reentry Hiring Fair and pro bono lawyers from the Chattanooga bar. Three times a year, the event brings in dozens of reentry resources from prospective employers to driver’s license and child support assistance. DeVoe conducts intake of people who need expungement assistance. She pulls their criminal records and works with the Hamilton County court clerk who prepares petitions to expunge dismissals. Volunteer lawyers then come together for an Attorney Expungement Day to review case files. “The lawyers enjoy getting together to work on the client files and brainstorm any expungement issues they identify,” explains DeVoe. For their



CONTINUED ON PAGE 22 >

September Expungement Event, nine volunteer lawyers helped 17 people file 100 expungement positions.

### Expungement Pop-up Courts

Several rural counties have hosted pop-up Saturday Community Courts, placing the entire infrastructure of the court — clerks, criminal records, lawyers and judges in a community space to help residents with expungement. In Monroe County, Criminal Court Judge Sandra Donaghy, General Sessions Court Judge Dwaine “Benjy” Thomas, Circuit Court Clerk Marty Cook, along with the UT Legal Clinic, public defender and district attorney organized two Community Courts in churches in Madisonville and Sweetwater. Court clerks helped law students pull records for more than 300 pre-registered clients. The law students analyzed the criminal records to determine



Law student-attorneys at Polk County clinic

if old charges could be expunged and court costs could be waived. The students sat down with clients one-on-one preparing legal documents to argue motions before the judges who “took the bench” in brightly colored Sunday school classrooms. In this

model, both general sessions and circuit court judges attended the event. The law students presented evidence of their client’s indigency, sometimes through direct examination, and made a legal argument for cost waiver relief.

“Lawyers have an ethical duty to help others, and these events serve that purpose,” says Judge Donaghy, “Sometimes people make a bad choice and are held accountable, but then they suffer from circumstances beyond their control. They agree to pay court costs, but then they lose their job, or they become sick and their bills pile up. When I granted relief, I could see how a weight was lifted from them. And they had a chance to remove the stigma of their conviction.”

### Full-Service Expungement Events

The final model builds on the pop-up community courts by creating regular events in collaboration with community-based organizations or courts going beyond expungement to include assistance with driver’s license reinstatement, voter restoration, civil rights restoration and certificates of employability.

As an example of this holistic model, the UT Legal Clinic partners four to six times a year with the Knoxville Area Urban League’s Workforce Development Program. Jackie Robinson, who directs the program, identifies participants who are seeking work and need reentry assistance. Law student-attorneys are assigned clients,

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### Pop-up community court in Monroe County

court clerks pull criminal histories and cost sheets, and the Knox County driver's license specialist provides reinstatement requirements. "The model has evolved over time to create a consistent and frequent service," Knox County General Sessions Court Judge Chuck Cerny explains, "Sometimes people have a sense that once they've been involved in the criminal justice system, it's hopeless. I'm so proud of Jackie Robinson and the UT Legal Clinic for seeing the need and stepping up to serve others in this way." This semester, Judge Cerny has been joined by Municipal Judge John Rosson. For Judge Rosson, "This is a great thing that we can do to help serve the community, and people feel comfortable coming to the Urban League." In just the first year, this full-service clinic helped more than 200 people expunge charges, waive costs and fees, restore voting rights and reinstate driver's licenses.

In Shelby County, during a Saturday this past summer, all eight general sessions court judges participated in an Expungement and Cost Waiver Event at the court's satellite community office where volunteer attorneys represented 137 clients. Dozens of reentry resources are onsite. "This annual event is the Cadillac expungement clinic model. The General Session's clerks office is a driving force, all of our judges are present

and hundreds of people are served," notes ATJ Commissioner Floyd.

### Beyond Pro Bono Expungement Clinics

In some counties, expungement assistance is routinely offered on a special court docket or as part of the clerk's office assistance. Reentry attorneys or students in law school clinics can provide consistent and predictable services throughout the year.

### SPECIAL COURT DOCKETS: The Music City Community Court

The Music City Community Court, established by General Sessions Judge Rachel L. Bell in 2012, includes a specialty court called the RESTORE: Re-Entry Court for Returning Citizens. RESTORE dockets are mostly held in Davidson County at the Bordeaux North Community Justice Center. The center is a more welcoming place than the courthouse for participants to have their court costs, fines and fees waived; expunge eligible charges; regain their right to vote; and reinstate their driver's licenses.

"One of the most memorable Saturdays was a RESTORE docket in 2016 when court started at 10 a.m. and concluded at 10 p.m. On that day over 400 participants were seen for indigency and record expungement, and so many lives were changed," Judge Bell explains.

Since 2012, RESTORE has assisted over 16,707 participants, waiving over \$10 million dollars in court cost, fines and fees, and saving taxpayers over \$136,000 in community service work. "The collaboration with Howard Gentry's Criminal Court Clerk Compliance Division is the key to our success. It takes

CONTINUED ON PAGE 24 >



Knoxville Area Urban League Community Court in action



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all of us coming together for a common goal,” says Judge Bell. Court clerks are essential to successful expungement assistance, and Gentry has been a leader in developing systems to help constituents.

### Expungement Screening and Automating Expungement Petitions

In Knoxville, the District Attorney’s Office and the Criminal Court clerk run an Expungement Screening twice a week.<sup>11</sup> At this walk-in screening, Assistant District Attorney Samyah Jubran meets with pro se individuals, reviewing their criminal charges, and talks to private attorneys who have prepared expungement paperwork. Court clerks pull histories and court cost information to fill out petitions, and law students in the UT Expungement Clinic provide additional legal advice.

One recent innovation in Knox

County is the automation of filling out non-conviction expungement petitions. Court Clerk Mandy Scarbrough worked with the IT department to develop a petition that is self-populated directly from the data in a person’s electronic criminal history. Clerks in Davidson and Hamilton Counties have also automated the form. As Scarbrough explained, “The volume of the work is tremendous and filling out petitions by hand is subject to human error. So being more efficient and accurate means helping more people.”

### Legal Aid Reentry Attorneys

Outside the courthouse, LAS has a reentry practice group that employs a wrap-around approach. Savannah Quintero, the newest reentry attorney, explains, “By taking a holistic approach to helping someone reenter after a criminal conviction, our

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# ATJ Commission Update

By Anne-Louise Wirthlin  
Assistant Director; Director of Access to Justice  
Office of Access, Innovation & Community Engagement

**The Tennessee** Access to Justice Commission used 2022 to bring stakeholders back together and get out into the community.

The Tennessee Faith & Justice Alliance hosted its first in-person Faith & Justice Summit since 2019 in April as part of Help4TNMonth. The ATJ Commission partnered with the Governor's Office of Reentry to host three expungement legal clinics in each grand division during Help4TNMonth.

The Tennessee Justice Bus, a mobile legal office that brings technology and access to rural and underserved communities, kicked off in June. Seventy-five lawyers volunteered at 20 different events and provided over 370 hours of pro bono services.

The ATJ Commission will continue its partnership with the Governor's Office of Reentry and increase its expungement and reentry work in 2023. The TN Justice Bus will be deployed across the state to bring much-needed legal help to some of our most vulnerable citizens. New resources and tools to better equip pro bono volunteers are being developed.

Visit [www.justiceforalltn.org](http://www.justiceforalltn.org) to learn more about the ATJ Commission and its initiatives.

legal work covers a lot of ground and includes reinstatement of driver's licenses, waiver of court costs and restoration of rights." Pursuing expungement, particularly conviction expungement, can be an overwhelming task without a lawyer. And it can be time-consuming for pro bono attorneys. Dedicated attorneys establish an institutional provider that ensures that people receive the benefits that Tennessee's statutes can offer.

## Law School Legal Clinics

Law schools can play a critical role through legal clinics and pro bono opportunities for law students who gain experience in dissecting complicated statutes and applying them to their clients' cases. In UT's Expungement Mini-Clinic, a one-credit course, students advise and represent clients at full-service events,

pop-up courts and weekly expungement screening. They work with local community organizations that provide wraparound services that complement their legal work.

Nicole Roth, a 2L, explains, "Although I am looking to pursue transactional law, the expungement clinic has given me a better understanding of how the legal system works. I've been able to appear on behalf of clients in front of judges and have a real impact on my clients' lives and livelihoods." Our students have expunged thousands of charges for hundreds of residents in Knoxville and rural counties like Grainger, Monroe, Cocke, Polk and Jefferson. Graduates like John Baxter, an associate at Nelson Mullins in Nashville, continue expungement work through Judge Bell's Music City Community Court.

Interested in learning more about organizing an expungement clinic? Please take this quick survey:



## Moving Forward

The energy around expunging records in Tennessee is palpable and the legal expertise has grown exponentially. Although the statute is robust, it is complicated and lengthy. The paperwork is extensive and time-consuming. And perhaps most importantly, the impact of the statute is not felt evenly in all 95 counties. The ATJ Commission, the Tennessee Bar Association's Access to Justice Committee and TALS have developed a statewide coalition that includes the Governor's Office of Reentry to examine how we can learn from our extensive expungement work and keep innovating.

Expungement has given thousands of people a fresh start, and as different players collaborate, the resources grow stronger and offer us insights into how Tennessee's expungement statute can do even more. III

## NOTES

1. *Tenn. Code Ann.* § 40-32-101.
2. *Tenn. Code Ann.* § 40-32-101 (g).
3. *Tenn. Code Ann.* § 40-32-101 (g)(1); *Tenn. Code Ann.* § 40-32-101(g)(2)(B)(i).
4. *Tenn. Code Ann.* § 40-32-101(g)(2)(F).
5. *Tenn. Code Ann.* § 40-32-101(g)(12)(B).
6. *Tenn. Code Ann.* § 40-32-101(g)(12)(D).
7. *Tenn. Code Ann.* § 40-32-101(g)(12)(B)-(C).
8. *Tenn. Code Ann.* § 40-32-101 (k).
9. *Tenn. Code Ann.* § 40-32-101(g)(1)(D)-(E), *Tenn. Code Ann.* § (2)(B)(ii)
10. *Tenn. Code Ann.* § 40-32-101(g)(2)(A)(i).
11. Tennessee Bar Association. "TBA YLD Recognized for Expungement Clinic Project." [www.tba.org/YLDexpclinic](http://www.tba.org/YLDexpclinic).
12. *Tenn. Sup. Ct. Rule* 7, § 10.03.
13. District Attorney General, Knox County. "Expungements." <https://dag.knoxcountyttn.gov/community-resources/expungements/>.



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### Upcoming Programs

Federal Practice Forum	May 9	2.5 General, 1 Dual
Immigration Law Forum	May 10	5 General
Entertainment & Sports Law Forum	May 11	3 General, 1 Dual
Local Government Forum	May 12	3 General, 1 Dual
Building Your Case Through Depositions: The Dos and Don'ts of Taking, Defending and Using Depositions	May 16	1 General
Accounting 101: An Attorney's Crash Course in Understanding Financial Documents	May 17	1 Dual
Dispute Resolution Annual Forum	May 19	1 Dual, 3 General
International Law Forum 2023: Part 2	June 2	2 General
Court Square CLE Series 2023: Gallatin, TN	June 7	1 Dual, 2 General
Real Estate Essentials	June 22	3 General
<b>ETHICS WEBCASTS with Stuart Teicher, Esq.</b> <ul style="list-style-type: none"> <li>• Eight Reasons Movie-Lawyers Would Be Disciplined</li> <li>• The Ethics of Asking For Work</li> <li>• From Bach to Beyonce: What Musical Arrangements Teach About Legal Writing</li> </ul>	June 23	1 Dual (each)
Elder Law Forum	July 21	4 General, 1 Dual



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**Federal Practice Forum**  
May 9

This year's Federal Practice forum will focus on protesting in America. Attendees will receive a refresher on the law of protests and learn more about human rights issues related to police use of force and the media's impact on protest and litigation.

1 Dual  
2.5 Gen.



**SPEAKERS/PRODUCERS:** Lance Baker, Curtis Collier, Elvin Evrim Dalkilic, Mohamed Faizer, Tamara Herold, Kathy Park, Melanie Reid



**Immigration Law Forum**  
May 10

This year's Immigration Law Forum (held in-person in Nashville) will cover timely topics affecting immigration attorneys. Sessions will include the Southeastern Provision plant raid, family law immigration updates, and the intersection of criminal and immigration law, and how foreign direct investment affects worker visas. Finish out the day with a practical session on statute analysis.

5 Gen.



**SPEAKERS/PRODUCERS:** Arléne Amarante, William Gill IV, Michelle Lapointe, Terrence Olsen, Jazmin Ramirez, Andrew Rankin, Steven Simerlein, Kanzi Takayama, Waddell Wright



**International Forum: Part 2**  
June 2

The TBA International Law Section will host the second half of its annual forum live in Nashville at 1212 Germantown from 1-4 p.m. CDT, followed by a networking reception open to all International Law section members. Topics include export controls and doing business in South America.

2 Gen.



**SPEAKER/PRODUCER:** Joseph Harrington

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### Entertainment & Sports Law Forum May 11

The Entertainment & Sports Law Section of the TBA is pleased to announce that its annual CLE will take place at Belmont College of Law. The panels and speakers slated for the CLE are sure to keep your attention and provide you with up-to-date information and inside knowledge on some of the hottest topics in the entertainment and sports industries currently.

1 Dual  
3 Gen.



**SPEAKERS/PRODUCERS:** Alexander Hall, Michael Johnson, Henry Queener, Colin Rushing, Nancy Steer, J. E. "Buddy" Stockwell



### Local Government Forum May 12

Government law is an ever-changing practice area with a unique blend of constitutional, statutory and case law. This year's program features a legislative update as well as sessions covering school resource officers, sovereign citizens and annexation. *This is a hybrid program.*

1 Dual  
3 Gen.



**SPEAKERS/PRODUCERS:** Shelly Wilson, Melissa Ashburn, Elisha Hodge, Joseph Jarret, Nick McBride



### Dispute Resolution Annual Forum May 19

Join the Dispute Resolution Section for carefully crafted sessions tailored to both lawyers and mediators. Topics include crafting a settlement, the art of negotiation, a discussion of litigation vs. arbitration in court and handling pro bono cases.

1 Dual  
3 Gen.



**SPEAKERS/PRODUCERS:** Thomas Santel Jr., Isaac Conner, Cindy Ettingoff, Linda Seely, Stephen Shields, Matt Sweeney

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## Elder Law Forum

July 21

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1 Dual  
4 Gen.

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- 35th Annual Health Law Forum – Nov. 2-3
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- Administrative Law Forum – Dec. 8

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