

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE, DIVISION I

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CALVIN EUGENE BRYANT,            )  
  )  
      *Petitioner,*                    )  
  )  
v.                                        )  
  )  
STATE OF TENNESSEE,            )  
  )  
      *Respondent.*                 )

Case: 2008-B-1478

Judge Steve R. Dozier

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VERIFIED PETITION FOR SENTENCING RELIEF

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**I. Introduction**

COMES NOW Petitioner Calvin Eugene Bryant, by and through undersigned counsel of record, and respectfully petitions this Court for sentencing relief.

Mr. Bryant is currently serving out the tenth year of a 17-year, mandatory minimum sentence for a first-time, non-violent drug offense that he committed when he was only twenty-two (22) years old. Mr. Bryant's unusually severe sentence was triggered by a strict liability, since-reformed sentencing enhancement that failed to account for any of his substantially mitigating personal circumstances. As a result, Mr. Bryant received a considerably longer sentence for committing a *first-time, non-violent* drug offense than he would have received if he had committed a *severe, violent* crime such as Rape, Second Degree Murder, Aggravated Robbery, Aggravated Vehicular Homicide, or Attempted First Degree Murder.

Based on Mr. Bryant's mitigating personal circumstances, the Assistant District Attorney who prosecuted Mr. Bryant actively supports his early release. See **Exhibit 1**

(Affidavit of former Assistant District Attorney Robert E. McGuire). Mr. McGuire has specifically explained that he “fail[s] to see how [Mr. Bryant’s] release at a time earlier than 2023—and after over nine years of incarceration—will deprecate the seriousness of the offenses for which he was convicted or significantly imperil the public safety.” *See id.* Of note, given Mr. Bryant’s extensive roots in a community that still cares for him deeply and is still reeling from his loss more than nine (9) years after he began his term of incarceration, Mr. McGuire does not stand alone in supporting Mr. Bryant’s re-sentencing. *See, e.g.,* **Exhibit 2** (Affidavit of State Representative Brenda Gilmore); **Exhibit 3** (Affidavit of Clinton Gray); **Exhibit 4** (Affidavit of Nashville NAACP President Ludye Wallace) **Exhibit 5** (Affidavit of Tennessee State NAACP Chair Marilyn Brown); **Exhibit 6** (Affidavit of Chenika Miller); **Exhibit 7** (Affidavit of Janice Blackburn); **Exhibit 8** (Affidavit of Kim D. Ross); **Exhibit 9** (Affidavit of Christal Williams); **Exhibit 10** (Affidavit of LaShana Bryant); **Exhibit 11** (Affidavit of Mason Caples); **Exhibit 12** (Affidavit of Allencia Blackburn); **Exhibit 13** (Affidavit of Annetta Bryant); **Exhibit 14** (Affidavit of Miesha Bryant); **Exhibit 15** (Affidavit of Erica Howse); **Exhibit 16** (Affidavit of Steve Beach).

Critically, among defendants whose sentences were enhanced under Tenn. Code Ann. § 39-17-432, Mr. Bryant’s sentence stands in a class of its own. Specifically, even without regard to Mr. Bryant’s youth, his substantially mitigating personal circumstances, or the non-violent nature of his crime, Mr. Bryant has the dubious distinction of being the only defendant in the history of this jurisdiction to receive Tenn. Code Ann. § 39-17-432’s sentencing enhancement for a first-time offense. *See* **Appendix A-2**.

Given the location-based nature of the sentencing enhancement at issue, Mr. Bryant’s sentence was also enhanced dramatically based on his poverty alone. If, for

example, Mr. Bryant had lived in a wealthy, residentially-zoned suburb like Belle Meade, then he likely would have been eligible for release after serving just two years and five months in prison for the exact same conduct. See **Exhibit 17**, p. 3 (Senate Judiciary Committee Memorandum). Because Mr. Bryant lived in the Edgehill Housing Projects, however, Mr. Bryant must serve a mandatory minimum sentence of at least fifteen (15) years before he even becomes eligible for parole.

Notably, in the time since Mr. Bryant's conviction, the Respondent's use of Tenn. Code Ann. § 39-17-432's intensely punitive sentencing enhancement has also evolved in several significant ways. For example, in 2015 and 2016, respectively, the Tennessee Supreme Court held that defendants charged under Tenn. Code Ann. § 39-17-432 are eligible for judicial diversion, and that Tenn. Code Ann. § 39-17-432's enhanced sentencing provisions do not apply to convictions for facilitation. See *State v. Dycus*, 456 S.W.3d 918, 929 (2015) ("we hold that the mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under the Act ineligible for judicial diversion."); *State v. Gibson*, 506 S.W.3d 450, 452 (2016) ("[W]e hold the Act does not apply to a conviction for facilitation.").

Most importantly, however, in the time since Mr. Bryant's conviction, Tenn. Code Ann. § 39-17-432 has been reformed operationally by the Respondent to avoid precisely the type of strict liability penalty that applied in Mr. Bryant's case. Under the Respondent's reformed policy, Respondent now uses Tenn. Code Ann. § 39-17-432 only to enhance the sentences of those who violate its essential purpose of keeping drugs away from children. See, e.g., Teresa Wiltz, *Why States Are Taking a Fresh Look at Drug-Free Zones*, PEW: STATELINE BLOG (Sept. 15, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/15/why-states-are-taking-a-fresh-look-at-drug->

free-zones (“Funk ran for office in 2014 promising not to prosecute the school zone laws unless a child was endangered[.]”) (attached hereto as **Exhibit 18**).

Disturbingly, however, before the present Davidson County District Attorney reformed the Respondent’s use of Tenn. Code Ann. § 39-17-432 to effectuate the law’s actual intent, *see id.*, this jurisdiction wielded the sentencing enhancement applied to Mr. Bryant with such a profoundly racially discriminatory impact that its previous use “is very difficult to explain on nonracial grounds.” *Washington v. Davis*, 426 U.S. 229, 242 (1976). Even Davidson County’s own Grand Jury has observed that the Respondent’s previous application of the school zone enhancement was arbitrary and capricious. *See* DAVIDSON COUNTY GRAND JURY, FINAL REPORT (2014), <http://trialcourts.nashville.gov/wp-content/uploads/2015/05/October-December-20142.pdf> (“The decision to seek increased penalties resulting from school zone violations seemed to be arbitrarily reached at times. The law needs to be applied equally, not arbitrarily and capriciously.”) (attached hereto as **Exhibit 19**). Although there is abundant evidence that people of all races in Nashville use and sell drugs at roughly equal rates, 87% of defendants in this jurisdiction who received enhanced sentences under Tenn. Code Ann. § 39-17-432 were people of color. *See Appendix A-1*. Additionally, like Mr. Bryant, 78% of the Davidson County defendants who were sentenced under Tenn. Code Ann. § 39-17-432 were black. *Id.*

For these reasons, and for the additional reasons set forth below, as applied to the unique circumstances of his case, Mr. Bryant’s grossly disproportionate sentence:

- (1) Violates the Eighth Amendment to the United States Constitution;
- (2) Violates Article I, § 16 of the Tennessee Constitution; and
- (3) Justifies postponing the execution of the balance of Mr. Bryant’s sentence

pursuant to Tenn. Code Ann. § 40-22-101 pending gubernatorial action on an application for pardon or commutation.

Accordingly, the instant Petition for Sentencing Relief should be **GRANTED**. As grounds for this Petition, Mr. Bryant respectfully states as follows:

## **II. Jurisdiction and Venue**

1. This Court has jurisdiction to hear the instant Petition pursuant to Tenn. Code Ann. § 40-30-101, *et seq.*; Tenn. Code Ann. § 40-22-101; Tenn. Code Ann. § 29-21-101; and Tenn. Code Ann. § 40-26-105.

2. Venue is proper pursuant to Tenn. Code Ann. § 40-30-104(a); Tenn. Code Ann. § 40-22-101; Tenn. Code Ann. § 29-21-105; and Tenn. Code Ann. § 40-26-105(c).

3. The Tennessee Supreme Court significantly reformed Tenn. Code Ann. § 39-17-432's sentencing enhancement in both 2015 and 2016. *Gibson*, 506 S.W.3d at 452 (“[W]e hold the Act does not apply to a conviction for facilitation.”); *Dycus*, 456 S.W.3d at 932 (“The mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under that act ineligible for judicial diversion.”).

4. The changes in the Respondent's application of Tenn. Code Ann. § 39-17-432—as compelled by *Gibson* and *Dycus*—apply directly to the circumstances of Mr. Bryant's case.

5. Since the time of Mr. Bryant's conviction, the Respondent has also reformed its use of Tenn. Code Ann. § 39-17-432 through a voluntary policy change. The Respondent's operationally-reformed use of Tenn. Code Ann. § 39-17-432's sentencing enhancement is recent, significant, and similarly applies to the circumstances of Mr. Bryant's case. See **Exhibit 18**.

6. Acknowledged statewide standards of decency regarding the subject matter

of this Petition have evolved within the past year. *See, e.g., Exhibit 17.*

7. The claims that Mr. Bryant raises in the instant Petition did not exist—and they were not available to him—either at the time of his sentencing or during the 12 months following his conviction.

8. Accordingly, Mr. Bryant is without fault for failing to present the claims raised in this Petition prior to their becoming legally cognizable.

9. The sentencing relief compelled by recent reforms to Tenn. Code Ann. § 39-17-432, coupled with the Eighth Amendment’s evolving standards of decency, require retrospective application within the meaning of Tenn. Code Ann. § 40-30-117(a)(1), to which this state’s process of collateral review must give effect. *See, e.g., Montgomery v. Louisiana*, 136 S. Ct. 718, 729 (2016), *as revised* (Jan. 27, 2016) (“[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.”).

10. Consequently, the claims that Mr. Bryant raises in the instant Petition are timely presented and fully cognizable. *See generally Hayes v. State*, No. M2016-01094-CCA-R3-ECN, 2017 WL 4315375, at \*2 (Tenn. Crim. App. Sept. 27, 2017).

### **III. Parties**

11. The Petitioner, Mr. Calvin Eugene Bryant, is serving a 17-year mandatory minimum sentence for a first-time, non-violent drug offense that was enhanced pursuant to the provisions of Tenn. Code Ann. § 39-17-432.

12. The Respondent, the State of Tennessee, is represented by the District Attorney General for Tennessee’s 20<sup>th</sup> Judicial District.

### **IV. Facts and Procedural History**

13. Calvin Bryant is a beloved former college student and erstwhile pillar of his

community who is serving a 17-year mandatory minimum sentence for a first-time, non-violent drug offense that he committed when he was just twenty-two (22) years old.

14. At the time of his arrest in 2008, Mr. Bryant was a budding, successful, and beloved young college student who was widely regarded as a pillar of his community.

15. As a graduate of Hillsboro High School and a standout fullback who had recently led his high school football team to the state championship, Mr. Bryant had dreams of becoming a professional football player after he graduated from Tennessee State University, where he enrolled so that he could stay at home to care for his ill father.

16. Throughout his youth, Mr. Bryant was universally adored by his peers and his teachers alike, who regarded him not only as a talented athlete, but also as “a peacemaker,” a “good student, an intelligent person, and a good problem solver.” *State v. Bryant*, No. M2009-01718-CCA-R3-CD, 2010 WL 4324287, at \*7 (Tenn. Crim. App. Nov. 1, 2010).

17. During Mr. Bryant’s sentencing in the instant case, one of his teachers—Mr. Walter Fisher—described Mr. Bryant as a “model citizen” with “impeccable” character who was “loving toward his family.” *Id.*

18. Another of Mr. Bryant’s teachers, Ms. Suzanne Frensley—who received the 2007 Teacher of the Year award for the State of Tennessee—testified that Mr. Bryant “took a great interest in the people who live in his neighborhood” and was “very generous” with her godmother. *Id.*

19. Ms. Frensley further characterized Mr. Bryant as someone who was “very close to his parents and sister” and had “a soft inside and a big heart.” *Id.*

20. Ms. Frensley also noted that Mr. Bryant expressed leadership “on a relationship level, caring about people, his family and friends.” *Id.*

21. Tragically—not only for Mr. Bryant, but also for his community, his teachers, his family, his friends, and the many people who loved him, looked up to him, and still care for him today—Mr. Bryant made an error in judgment as a 22-year-old college student that altered his life forever.

22. Specifically, between March and April of 2008, an informant who was working for the Metropolitan Nashville Police Department called Mr. Bryant repeatedly, showed up at his residence, and ultimately sought and successfully purchased a total of 320 pills from Mr. Bryant—primarily MDMA—that Mr. Bryant agreed to procure at the informant’s request. 75% of the pills tested positive for a controlled substance.

23. The offense did not involve violence.

24. The offense did not involve children.

25. The offense did not occur at a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park.

26. The sales were not made or even alleged to have been made in intentional, knowing, reckless, or negligent violation of Tenn. Code Ann. § 39-17-432.

27. As defined by Tenn. Code Ann. § 40-38-302(4)(A)(i), the offense was victimless.

28. Nonetheless, because Mr. Bryant’s residence in the Edgehill Housing Projects was located within 1,000 feet of a school, Mr. Bryant was charged and convicted under the strict liability sentencing enhancement codified at Tenn. Code Ann. § 39-17-432.

29. Consequently, Mr. Bryant received a 17-year sentence, and he must serve a mandatory minimum sentence of 15 years before he even becomes eligible for parole.

30. If Mr. Bryant had lived in a residence that was not located within a school zone, then he would have been released from prison approximately seven (7) years ago for the very same conduct. See **Exhibit 17**, p. 3.

31. Mr. Bryant does not have any other adult felony convictions, misdemeanor convictions, or arrests on his record. See **Appendix A-2**.

32. Mr. Bryant's absence of prior adult criminal history was attributable to a combination of youth, his aforementioned behavior as a "model citizen" who had "impeccable" character and was "loving toward his family"; and the fact that, after graduating from Hillsboro High School, Mr. Bryant "enrolled at Tennessee State University and, while in school, worked first for *The Tennessean* newspaper and then Coca-Cola." *Bryant*, 2010 WL 4324287, at \*8.

33. Mr. Bryant has already served more than nine (9) full years in prison for his first-time, non-violent drug offense. See **Exhibit 1**, ¶ 9.

34. Because fifteen (15) years of Mr. Bryant's 17-year sentence are mandatory, Mr. Bryant will not even become eligible for parole until May of 2023. *Id.* at ¶ 10.

35. No apparent benefits would inure to society by requiring Mr. Bryant to spend an additional 6-8 years in prison for his first-time, non-violent drug offense. See *id.* at ¶¶ 11-12 (Affidavit of Mr. McGuire) ("I fail to see how an additional six years of incarceration will improve Mr. Bryant's amenability to correction or would be required to maintain public safety. I additionally fail to see how his release at a time earlier than 2023—and after over nine years of incarceration—will deprecate the seriousness of the offenses for which he was convicted or significantly imperil public safety.").

36. As a result, former General McGuire—one of the District Attorneys who prosecuted Mr. Bryant—actively supports his early release. *Id.*

37. Specifically, former General McGuire has stated that he “would personally not oppose a clemency or early release petition by [Mr. Bryant] given the long term of incarceration he has already served and the non-violent nature of the offenses for which he was convicted.” *Id.* at ¶ 13. His conclusion in this regard was further based on:

(1) the non-violent nature of Mr. Bryant’s offense, *see id.*;

(2) the fact that Mr. Bryant’s release after nearly a decade of incarceration would not “deprecate the seriousness of the offenses for which he was convicted;” *id.* at ¶ 11; and

(3) the fact that releasing Mr. Bryant would not “imperil the public safety.” *Id.* at ¶ 11.

38. At the time that Mr. Bryant was convicted in 2009, the Respondent took the position that defendants like Mr. Bryant were not eligible for judicial diversion under Tenn. Code Ann. § 39-17-432.

39. In 2015, however, the Tennessee Supreme Court held that defendants like Mr. Bryant actually are eligible for judicial diversion under Tenn. Code Ann. § 39-17-432. *See Dycus*, 456 S.W.3d at 932 (“The mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under that act ineligible for judicial diversion.”).

40. Given Mr. Bryant’s substantially mitigating personal circumstances; his status as a first-time adult offender; and his deep roots in his community, Mr. Bryant would have been a strong candidate for diversion if this option had been available to him at the time of his conviction. *See generally* **Exhibit 2** (Affidavit of State Representative Brenda Gilmore); **Exhibit 3** (Affidavit of Clinton Gray); **Exhibit 4** (Affidavit of Nashville NAACP President Ludy Wallace); **Exhibit 5** (Affidavit of Tennessee State NAACP Chair Marilyn Brown); **Exhibit 6** (Affidavit of Chenika Miller); **Exhibit 7** (Affidavit of Janice

Blackburn); **Exhibit 8** (Affidavit of Kim D. Ross); **Exhibit 9** (Affidavit of Christal Williams); **Exhibit 10** (Affidavit of LaShana Bryant); **Exhibit 11** (Affidavit of Mason Caples); **Exhibit 12** (Affidavit of Allencia Blackburn); **Exhibit 13** (Affidavit of Annetta Bryant); **Exhibit 14** (Affidavit of Miesha Bryant); **Exhibit 15** (Affidavit of Erica Howse); **Exhibit 16** (Affidavit of Steve Beach).

41. When Mr. Bryant was convicted in 2009, the State of Tennessee—and this jurisdiction in particular—also adopted the position that Tenn. Code Ann. § 39-17-432’s sentencing enhancement applied to convictions for facilitation.

42. In 2016, however, in a case arising out of this jurisdiction, the Tennessee Supreme Court held that Tenn. Code Ann. § 39-17-432’s enhancement does *not* apply to convictions for facilitation. *See Gibson*, 506 S.W.3d at 452 (“[W]e hold the Act does not apply to a conviction for facilitation.”).

43. Prior to his conviction, Mr. Bryant had the opportunity to resolve his case by pleading guilty to the lesser-included offense of facilitation and serving a concurrent sentence of eight years. *See Exhibit 20*, ¶ 2 (Affidavit of Joy S. Kimbrough, Esq.). Mr. Bryant declined this offer, however, because at the time, both Parties believed that Tenn. Code Ann. § 39-17-432’s sentencing enhancement applied to convictions for facilitation, meaning that Mr. Bryant would have had to serve 100% of the sentence without ever becoming eligible for parole. *Id.* at ¶ 3.

44. An unenhanced facilitation conviction would have rendered Mr. Bryant eligible for both early parole eligibility and a significantly reduced sentence. Accordingly, if he had accepted this offer, then Mr. Bryant would have been released from prison several years ago. *Bryant v. State*, 460 S.W.3d 513, 530 (Tenn. 2015) (“[A] conviction for the facilitation of this offense, a Class B felony, could have resulted in a sentence of as

little as eight years.”).

45. Critically, since the time of Mr. Bryant’s conviction, the new District Attorney General for Tennessee’s 20<sup>th</sup> Judicial District has substantially modified the Respondent’s use of Tenn. Code Ann. § 39-17-432’s sentencing enhancement to advance the law’s expressly stated legislative purpose. See **Exhibit 18**.

46. Under its current policy, the Respondent no longer applies Tenn. Code Ann. § 39-17-432 as a strict liability enhancement, as it did in Mr. Bryant’s case. See *id.*

47. Instead, to effectuate the law’s intended purpose, the Respondent only uses Tenn. Code Ann. § 39-17-432 to enhance the sentences of defendants who endanger or intend to endanger children by selling drugs to children or by selling drugs inside a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park. *Id.* at 4.

48. Because the sales at issue in this case were made to an adult government informant at the Petitioner’s residence, did not endanger children, and were not intended to endanger children, Mr. Bryant’s sentence would not have been enhanced pursuant to Tenn. Code Ann. § 39-17-432 under the Respondent’s reformed sentencing policy. *Id.*

49. Thus, in addition to the fact that Mr. Bryant would have qualified for diversion or received a significantly reduced sentence under the lesser-included charge of facilitation, if Mr. Bryant had committed the very same offense today, then the Respondent would not even have sought the 17-year sentence that Mr. Bryant received.

50. The government’s informant, OCA Number: 188229, had thirty-nine (39) separate convictions on his record in Davidson County alone at the time of the drug sales at issue in this case. See *Record Check Search Criteria: Knowles, Terrance – D.O.B.:*

1/15/1979,        DAVIDSON        COUNTY        CRIMINAL        COURT        CLERK,

[https://sci.ccc.nashville.gov/Search/CriminalHistory?P\\_CASE\\_IDENTIFIER=TERRENCE%5EKNOWLES%5E01151979%5E188229](https://sci.ccc.nashville.gov/Search/CriminalHistory?P_CASE_IDENTIFIER=TERRENCE%5EKNOWLES%5E01151979%5E188229) (last visited Oct. 22, 2017, 6:54 PM).<sup>1</sup>

51. At the time of Mr. Bryant's arrest, the informant's criminal record included violent felony and misdemeanor convictions for aggravated assault, domestic assault causing bodily injury, assault causing bodily injury (three times), simple assault, aggravated criminal trespass, and reckless endangerment. *Id.*

52. In exchange for successfully securing Mr. Bryant's conviction, the government's informant received payments totaling \$1,070.00 in taxpayer dollars, and he also had his own pending felony charge dismissed. *See generally Bryant*, 2010 WL 4324287, at \*3, 5.

53. The informant has since been indicted for—and convicted of—at least six (6) separate criminal offenses in Davidson County alone since helping secure Mr. Bryant's conviction, including several felonies. The informant also has an additional case pending on yet another felony charge.

54. Consequently, as a result of Mr. Bryant's conviction in the instant case, the Respondent traded the freedom of a beloved pillar of his community for the freedom of a violent career criminal and repeat felony offender who is still committing crimes over and over and over again today.

55. For his part, Mr. Bryant was indicted and tried twice in relation to the above-described transactions. *Bryant*, 2010 WL 4324287, at \*1.

56. After Mr. Bryant's first trial, the Court declared a mistrial after several jurors concluded that the above-described informant had entrapped Mr. Bryant. *Id.*

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<sup>1</sup> The informant's name has already been stated publicly in the published appellate record of this case. *See Bryant*, 2010 WL 4324287, at \*1. Thus, these search terms do not disclose the identity of a confidential government witness.

("[T]he defendant was originally tried in October 2008, but the jury was unable to reach a verdict. The trial court declared a mistrial, and the case was transferred to a different trial court division.").

57. After Mr. Bryant's second trial, however, Mr. Bryant was acquitted of one count but convicted of three counts of selling a controlled substance in a school zone. *Id.*

58. Mr. Bryant's trial counsel did not request a facilitation instruction at his second trial. *See Bryant*, 460 S.W.3d at 529 (Tenn. 2015), *overruled by Moore v. State*, 485 S.W.3d 411 (Tenn. 2016).

59. In 2015, the Tennessee Supreme Court held that Mr. Bryant's trial counsel's failure in this regard did not prejudice him. *See id.*

60. The following year, however, the Tennessee Supreme Court overruled this decision in part. *See Moore*, 485 S.W.3d at 421.

61. In November 2016, the Tennessee Supreme Court also held that Tenn. Code Ann. § 39-17-432's sentencing enhancement would not have "appl[ie]d to a conviction for facilitation." *Gibson*, 506 S.W.3d at 452. The Court's mandate issued December 6, 2016.

62. Of special note, Tenn. Code Ann. § 39-17-432 can be applied to virtually every drug sale that takes place in Nashville. *See, e.g., Vincent Wyatt, Drug Free School Zones Raise Stakes in Nashville, Tennessee, AVVO* (Jan. 11, 2012), <https://www.avvo.com/legal-guides/ugc/drug-free-school-zones-raise-stakes-in-nashville-tennessee> ("Years ago, Tennessee enacted the Drug Free School Zone laws aimed at enhancing the punishment for those that sell drugs near minors. . . . [T]here is nothing that prevents the application of such laws against virtually any criminal defendant in a city such as Nashville.") (attached hereto as **Exhibit 21**).

63. Until being reformed in 2014, Tenn. Code Ann. § 39-17-432 was selectively

applied in an arbitrary and capricious manner. See **Exhibit 19** (“The decision to seek increased penalties resulting from school zone violations seemed to be arbitrarily reached at times. The law needs to be applied equally, not arbitrarily and capriciously.”).

64. In the history of Davidson County, only 62 defendants have ever been convicted under Tenn. Code Ann. § 39-17-432. See **Appendix A-1**.

65. Nearly 90% of these 62 defendants were people of color. See *id.*

66. 78% of these 62 defendants were black. See *id.*

67. Despite the large number of drug sales that have taken place in Nashville, Mr. Bryant is the only defendant in the history of this jurisdiction to receive an enhanced sentence under Tenn. Code Ann. § 39-17-432 who had no prior criminal record at the time of his conviction.<sup>2</sup> See **Appendix A-2**.

68. At the time of his conviction, Mr. Bryant was just 22 years old. He is now 31. Mr. Bryant has spent the last nine years of his life in prison.

## **V. Claims**

### **A. Mr. Bryant’s sentence violates the Eighth Amendment as applied.**

69. The Eighth Amendment to the United States Constitution prohibits the imposition of “cruel and unusual punishments.” U.S. CONST. amend. VIII.

70. Central to the Eighth Amendment’s protection is the principle that punishment for a crime must be “graduated and proportioned to the offense.” *Graham v. Florida*, 560 U.S. 48, 59 (2010).

71. As such, “the Eighth Amendment’s ban on cruel and unusual punishments

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<sup>2</sup> As used in this Petition, “criminal record” refers to publicly available charges. Mr. Bryant had two juvenile charges on his record, and he previously had two adult arrests on his record, neither of which resulted in a conviction, so they were expunged. His sentence was also enhanced on a separate basis that has since been declared unconstitutional. See *State v. Byars*, No. W2016-00005-CCA-R3-CD, 2017 WL 758517, at \*16 (Tenn. Crim. App. Feb. 27, 2017).

‘prohibits . . . sentences that are disproportionate to the crime committed.’” *Ewing v. California*, 538 U.S. 11, 22 (2003) (quoting *Solem v. Helm*, 463 U.S. 277, 284 (1983)).

72. This “constitutional principle of proportionality has been recognized explicitly [by the Supreme] Court for almost a century.” *Id.*

73. Based on the constitutional principle of proportionality, the Eighth Amendment “proscribes ‘all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive.’” *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311, n. 7 (2002)).

74. Courts measure proportionality by reference to “the evolving standards of decency that mark the progress of a maturing society,” rather than by the standards in place at the time of sentencing. *Id.* (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

75. When a petitioner challenges a defined term-of-years sentence as excessive and disproportionate under the Eighth Amendment, courts must consider “all of the circumstances of the case to determine whether the sentence is unconstitutionally excessive.” *Graham*, 560 U.S. at 59. *See also United States v. Slatten*, 865 F.3d 767, 811 (D.C. Cir. 2017) (“When addressing an as-applied [Eighth Amendment] challenge, courts begin ‘by comparing the gravity of the offense and the severity of the sentence’ based on ‘all of the circumstances of the case.’”).

76. In resolving an Eighth Amendment claim, the Supreme Court has instructed courts to assess the proportionality of a sentence according to three objective criteria:

- (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.

*Solem*, 463 U.S. at 292.

77. In the instant case, all three of these criteria favor Mr. Bryant.

**1A. Gravity of an Offense.**

78. “When evaluating the severity of a crime, [courts] consider the harm caused or threatened to the victim or society and the culpability and degree of involvement of the defendant.” *Id.* at 812 (quotations omitted) (citing *Solem*, 463 U.S. at 292).

79. Here, Mr. Bryant non-violently sold drugs to an aggressive government informant who: (1) contacted him repeatedly, (2) reminded Mr. Bryant that “he had helped raise him,” (3) insisted that he needed to acquire drugs to earn money to feed his family, and (4) pleaded with Mr. Bryant to help him. *Bryant*, 2010 WL 4324287, at \*9.

80. Mr. Bryant neither planned nor threatened violence during the sales at issue, and no violence resulted from them.

81. No children were involved in the sales.

82. Mr. Bryant’s crime was victimless within the meaning of Tenn. Code Ann. § 40-38-302(4)(A)(i).

83. No member of society experienced any harm as a consequence of the sales.

84. Considering “all of the circumstances of the case,” the gravity of the offense and the severity of Mr. Bryant’s crime are comparable to the tens of thousands of other defendants in this jurisdiction who have made non-violent drug sales to adults—not one of whom has ever received a sentence as severe as Mr. Bryant’s for a first-time offense.

85. Mr. Bryant does not dispute his culpability for the sales at issue.

86. However, Mr. Bryant’s culpability for the *enhanced* penalty that is the subject of the instant Petition is non-existent by statutory design.

87. Mr. Bryant’s unusually severe sentence was triggered by a strict liability sentencing enhancement that does not require any degree of culpability and is entirely

unconcerned with a defendant's mental state. *See, e.g., State v. Smith*, 48 S.W.3d 159, 166, n. 3 (Tenn. Crim. App. 2000) (“[A] defendant need not be aware of his presence in the school zone or intend to sell drugs inside a school zone in order to trigger an enhanced criminal penalty under the Drug-Free School Zone Act.”).

88. The sales at issue were neither made nor even alleged to have been made in intentional, knowing, reckless, or negligent violation of Tenn. Code Ann. § 39-17-432.

89. Accordingly, Mr. Bryant's culpability is comparable to non-violent defendants who engaged in drug transactions but who did not do so with any resulting harm to children or intent to harm children.

90. Critically, courts afford less deference to legislatively mandated terms of imprisonment where, as here, a statute's application in a given instance only marginally relates to the legislature's purpose when it created the statute. *See Slatten*, 865 F.3d at 812 (holding that deference is improper “when a statute's application only tangentially relates to [the legislature's] purpose for creating the statute in the first place”). *See also Gonzalez v. Duncan*, 551 F.3d 875, 884–86 (9th Cir. 2008) (holding that the application of a statute to a defendant under circumstances that were only tangentially related to the legislature's reason for creating the law undermined the gravity of the offense).

91. The legislature's stated purpose when it created Tenn. Code Ann. § 39-17-432 was to provide “all students in this state an environment in which they can learn without the distractions and dangers that are incident to the occurrence of drug activity in or around school facilities.” *Smith*, 48 S.W.3d at 163.

92. Rather than advancing this purpose, Tenn. Code Ann. § 39-17-432's application to Mr. Bryant *undermines* legislative intent for several independent reasons.

93. *First*, Mr. Bryant conducted the sales at the urging of—and at a location

selected by—a government informant.

94. Thus, rather than *preventing* the “dangers that are incident to the occurrence of drug activity in or around school facilities,” the government’s informant *cultivated* them.

95. In detailing her “ever increasing concern regarding enhancement of convictions under [Tenn. Code Ann. § 39-17-432],” see *State v. Peters*, No. E2014-02322-CCA-R3-CD, 2015 WL 6768615, at \*11 (Tenn. Crim. App. Nov. 5, 2015) (McMullen, J., “reluctantly” concurring), one of Tennessee’s jurists has held that such circumstances directly undermine Tenn. Code Ann. § 39-17-432’s legislative intent, stating:

I simply do not believe that the Tennessee legislature intended the scope of the Act to include drugs brought into the protected school zone by law enforcement's own design. This concept of luring, which commonly takes the form of an undercover sting operation, is inconsistent with the legislative intent of the Act and defeats the overall purpose of “creat[ing] a drug-free school zone to reduce the occurrence of illegal drug activity in and around school facilities in order to enhance the learning environment.”

*Id.* (quoting *Smith*, 48 S.W.3d at 168).

96. As such, Tenn. Code Ann. § 39-17-432’s application to Mr. Bryant contravened—rather than advanced—the legislature’s stated purpose in enacting Tenn. Code Ann. § 39-17-432. The gravity of Mr. Bryant’s offense is reduced accordingly.

97. *Second*, Mr. Bryant made the non-violent drug sales underlying this Petition to an adult at Mr. Bryant’s residence, rather than to a child at a school.

98. Accordingly, the sale was not the same or even similar to a drug sale made to a child inside a school facility.

99. Nonetheless, Tenn. Code Ann. § 39-17-432 treats Mr. Bryant’s sale to an adult government informant at his own residence as if it were identical to a drug sale made to a child on school grounds, eliminating any added incentive not to sell drugs to children.

100. Punishing a drug sale to an adult at a defendant’s residence with the same severity as a drug sale to a child at a school advances no coherent statutory purpose.

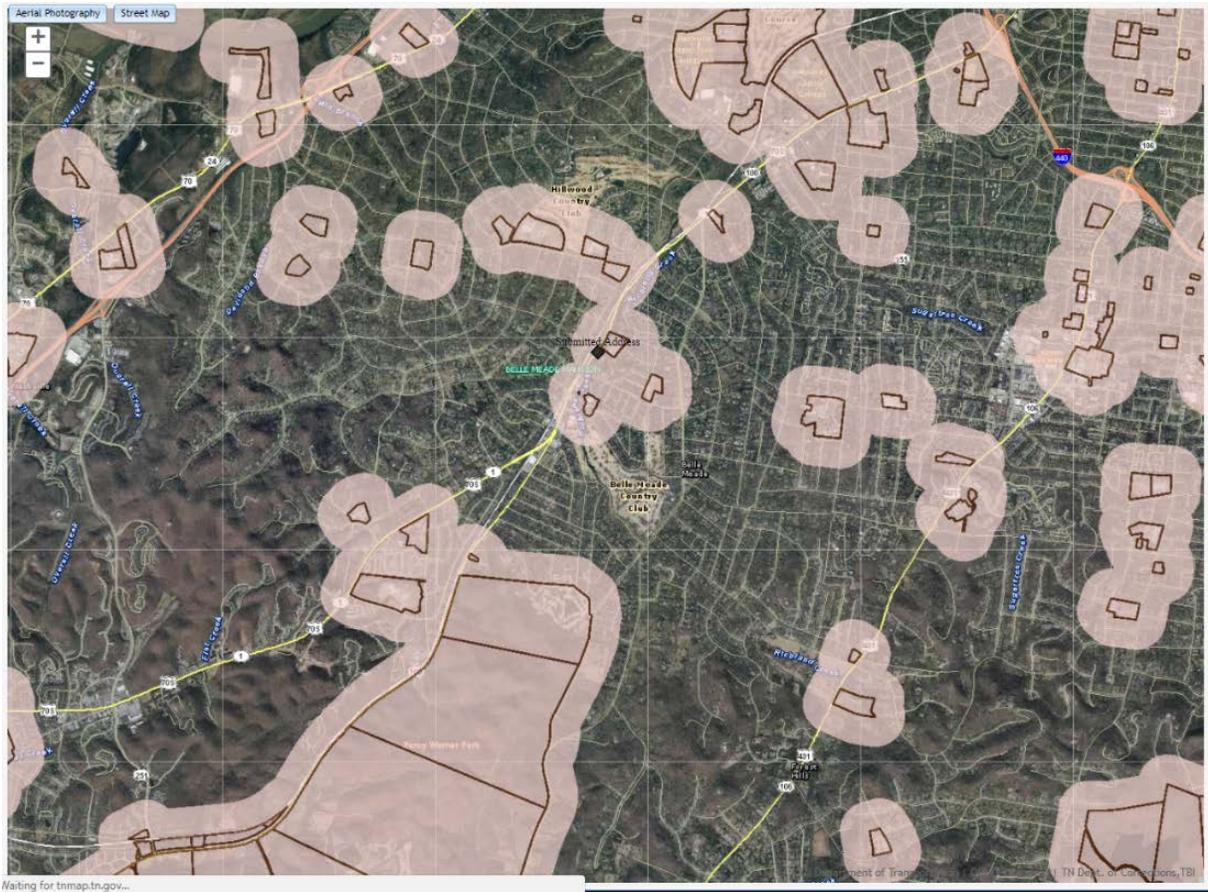
101. *Third*, applying Tenn. Code Ann. § 39-17-432 as a strict liability enhancement to all drug sales that occur “within one thousand feet (1,000’) of . . . a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park” significantly undermines the legislature’s efforts to create meaningful drug-free school zones.

102. The vast breadth of the “protected” zones at issue—which span more than 3.1 million square feet *each*—covers almost every habitable portion of Nashville and virtually all of its urban core:



*Drug Free Zones, TENN. BUREAU OF INVESTIGATION,*  
[http://tbidrugfreezones.tbi.tn.gov/tbi\\_drugfreezones/](http://tbidrugfreezones.tbi.tn.gov/tbi_drugfreezones/) (last visited Oct. 22, 2017, 7:17 PM) (search: “Davidson County”).

103. Admittedly, significant portions of wealthy, residentially-zoned suburban communities—like Belle Meade—do not qualify as “protected” areas:



*Id.* (search: “5025 Harding Pike, Nashville, TN 37205”).

104. As far as poor communities go, however, only rural communities on the far outskirts of Davidson County—like farmland in Joelton—avoid heavy school zone concentration. See image at ¶ 102. By comparison, Mr. Bryant’s Edgehill neighborhood looks like this:



*Drug Free Zones, TENN. BUREAU OF INVESTIGATION*, [http://tbidrugfreezones.tbi.tn.gov/tbi\\_drugfreezones/](http://tbidrugfreezones.tbi.tn.gov/tbi_drugfreezones/) (last visited Oct. 22, 2017, 7:18 PM) (search: 1277 12th Ave S, Nashville, TN 37203”).

105. Thus, when Tenn. Code Ann. § 39-17-432 is applied strictly—as it was in Mr. Bryant’s case—virtually every drug transaction within Nashville’s city limits is eligible for enhanced sentencing. *See id.* *See also* **Exhibit 21** (“Years ago, Tennessee enacted the Drug Free School Zone laws aimed at enhancing the punishment for those that sell drugs near minors. No one can challenge the intent of the law; however, there is nothing that prevents the application of such laws against virtually any criminal defendant in a city such as Nashville.”).

106. Failing to distinguish between, on the one hand, drug sales *at a school to a*

*child*, and on the other, drug sales *at a person's home to an adult*, devastates Tenn. Code Ann. § 39-17-432's central legislative purpose, because it completely eliminates the statute's added incentive not to sell drugs near children. See, e.g., The Associated Press, *Doubts Spread About Drug-free School Zone Laws: Questions About Effectiveness Prompt States to Propose Smaller Zones*, NBC NEWS (Mar. 23, 2006, 12:33 AM), [http://www.nbcnews.com/id/11964167/ns/us\\_news-education/t/doubts-spread-about-drug-free-school-zone-laws/](http://www.nbcnews.com/id/11964167/ns/us_news-education/t/doubts-spread-about-drug-free-school-zone-laws/) (“**When the overlap of zones in densely populated areas covers the entire city, the idea of special protection loses its meaning . . . . If every place is a stay-away zone, no place is a stay-away zone.**”) (emphasis added) (attached hereto as **Exhibit 22**).

107. Thus, the severity of Mr. Bryant's crime and his culpability are also comparable to standard drug offenders who are responsible for non-violent drug sales between adults, not those responsible for selling drugs to children at schools.

108. If Mr. Bryant had been prosecuted as a standard drug offender—rather than being prosecuted as an enhanced offender under Tenn. Code Ann. § 39-17-432—then he would have been released from prison nearly seven years ago. See **Exhibit 17**, p. 3.

### **1B. Harshness of the Penalty.**

109. In evaluating the harshness of a penalty, relevant factors include the defendant's criminal history and whether a defendant is “a first offender.” *Solem*, 463 U.S. at 296. See also *Ewing*, 538 U.S. at 29 (“In weighing the gravity of [the defendant's] offense, we must place on the scales not only his current felony, but also his . . . history”); *Slatten*, 865 F.3d at 812 (citing *Rummel v. Estelle*, 445 U.S. 263, 276 (1980)) (“The Court

may also consider the defendant's criminal history.”).<sup>3</sup>

110. “In fact, in virtually every instance where the Supreme Court has upheld the imposition of a harsh sentence for a relatively minor nonviolent crime for an as-applied challenge, it has done so in the context of a recidivist criminal.” *Slatten*, 865 F.3d at 814.

111. As such, a defendant’s lack of a prior criminal record is a significant factor with respect to the Eighth Amendment’s proportionality analysis. *See id.*; *see also id.* at 815 (“We also find it highly significant that none of the defendants sentenced under Section 924(c) have any prior convictions . . . . [A] regime of strict liability resulting in draconian punishment is usually reserved for hardened criminals. . . . [C]lean criminal records weigh against the imposition of a harsh, mandatory sentence.”).

112. In the instant case, Mr. Bryant was a first-time adult offender who had no prior adult criminal history. *See Appendix A-2.*

113. Consequently, this factor also militates against the constitutionality of Mr. Bryant’s extraordinarily harsh, 17-year sentence—15 years of which are mandatory.

114. In evaluating the harshness of a sentence, the Supreme Court also “relie[s] heavily” on when a defendant will become eligible for parole. *Solem*, 463 U.S. at 296 (citing *Rummel*, 445 U.S. at 280-81).

115. Mr. Bryant does not become eligible for parole until he has served a 15-year mandatory minimum prison sentence. *See Exhibit 1, ¶¶ 8-10.* By any measure, becoming eligible for parole only after serving fifteen (15) years in prison for a first-time, non-violent drug offense is extraordinarily harsh.

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<sup>3</sup> If a defendant has a prior criminal record, then courts also consider whether a defendant’s prior convictions were violent and whether a defendant’s prior conviction was “a crime against a person.” *Solem*, 463 U.S. at 296. *See also Ewing*, 538 U.S. at 29 (“In weighing the gravity of Ewing’s offense, we must place on the scales not only his current felony, but also his long history of felony recidivism.”).

116. Consequently, this factor weighs against the constitutionality of Mr. Bryant's sentence as well.

## **2. Sentences Imposed on Other Criminals in the Same Jurisdiction.**

117. A defined term-of-years sentence is constitutionally excessive when it is grossly disproportionate to the offense. *See, e.g., Weems v. United States*, 217 U.S. 349 (1910) (holding that a punishment of 12 years jailed in irons at hard and painful labor for the crime of falsifying records was constitutionally excessive). *See also Rummel*, 445 U.S. at 271 (holding that the Eighth Amendment prohibits "grossly disproportionate" sentences); *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (same).

118. Comparing a defendant's sentence to sentences imposed on other criminals in the same jurisdiction represents an objective measure of proportionality that courts must consider in determining whether a sentence is excessive. *See Solem*, 463 U.S. at 292.

119. When comparing a defendant's sentence to other sentences imposed in the same jurisdiction, courts consider two separate questions.

120. *First*, courts consider whether the law punishes the offense more severely than other, more serious crimes in the jurisdiction. *See, e.g., Slatten*, 865 F.3d at 818 (comparing defendants' 30-year sentences under 18 U.S.C. § 924 to "other federal crimes with similar sentences").

121. *Second*, courts consider whether the defendant received a more severe punishment than other criminals in the jurisdiction for the same crime. *See id.* (comparing defendants' 30-year sentences under 18 U.S.C. § 924 to "other instances in which Section 924(c) has been applied . . .").

122. Both of these considerations militate in favor of a finding that Mr. Bryant's

sentence is excessive as well.

**i. Mr. Bryant's offense was punished more severely than far more serious, violent crimes in this jurisdiction.**

123. Mr. Bryant's offense was punished more severely than other, more serious crimes in Tennessee. See **Exhibit 17**, p. 2.

124. The Senate Judiciary Committee has formally recognized this reality. See *id.* Under the Judiciary Committee's own analysis, Mr. Bryant's sentence is grossly disproportionate because it is significantly more severe than sentences imposed for significantly more serious *violent* crimes in Tennessee. *Id.*

125. As that Committee concluded, as a Range I offender, Mr. Bryant's 17-year (15-year mandatory minimum) sentence for a first-time, non-violent drug offense compares to far more serious *violent* crimes as follows:

**Rape**<sup>4</sup>

- Unlawful sexual penetration of a victim by the defendant
- Class B Felony, Sentencing Range of 8-12 years (if Range I offender)
- Sentence: 7 years (8 years (min. range) at 85%)

**Second Degree Murder**

- Knowing killing of another
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 13 years (15 years (min. range) at 85%)

**Aggravated Robbery**

- Robbery with a weapon or where victim suffers serious bodily injury
- Class B Felony, Sentencing Range of 8-12 years (if Range I offender)

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<sup>4</sup> Mr. Bryant quotes all of these comparisons directly from the Senate's Judiciary Committee's memorandum, attached hereto as **Exhibit 17**. For ease of comparison, however, a simpler indication of the sentence that a similar defendant would have faced for Rape would be as follows:

- Unlawful sexual penetration of a victim by the defendant
- Class B Felony, Sentencing Range of 8-12 years (if Range I offender)
- Minimum sentence: 6 years, 10 months (8 years (min. range) at 85%)
- Maximum Sentence: 10 years, 3 months (12 years (max. range) at 85%)

- Sentence: 7 years (8 years (min. range) at [70]%<sup>5</sup>)

**Aggravated Vehicular Homicide**

- Drunk driver with blood alcohol content over [0.20] kills someone
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 11 years (25 years (max range) at 45%)

**Attempted First Degree Murder Where Serious Bodily Injury Occurs**

- Attempted murder with intent and the victim suffers serious bodily injury but does not die
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 11 years (15 years (min. range) at 75%)

See **Exhibit 17**, p. 2.

**ii. Mr. Bryant was punished more severely than other criminals in the jurisdiction who committed the *same* crime.**

126. Mr. Bryant’s punishment was also significantly more severe than the sentences imposed on other defendants in Tennessee who committed the *same* (or more serious) drug crime. See, e.g., **Exhibit 18**, p. 3 (“[I]n Tennessee, a small-time dealer in a city can end up doing much more prison time than, say, a meth manufacturer in the country, just on the basis of geography.”). See also DeRay Mckesson, *We Can All Win*, POD SAVE THE PEOPLE, EPISODE 5 (Sep. 19, 2017), available at <https://itunes.apple.com/us/podcast/pod-save-the-people/id1230148653?mt=2&i=392439311> (Tennessee Senate Minority Leader Lee Harris discussing vastly disparate sentencing for drug crimes in Tennessee due to Tenn. Code Ann. § 39-17-432).

127. Given that the overwhelming majority of drug sales that take place in Nashville occur “within one thousand feet (1,000’) of . . . a public or private elementary

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<sup>5</sup> The Senate’s memorandum provides for release eligibility at 85% of an Aggravated Robbery sentence. Pursuant to Tenn. Code Ann. § 40-35-501(k)(1), however, the release eligibility for Aggravated Robbery (for a Range I offender) is actually 70% including sentence reduction credits.

school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park,” virtually every drug transaction in a Tennessee city is eligible for the sentencing enhancement contained in Tenn. Code Ann. § 39-17-432. *See Exhibit 21. See also* Images at ¶ 102; ¶ 104.

128. Even so, in the more than two decades since Tenn. Code Ann. § 39-17-432 was enacted, only 436 defendants in all of Tennessee have ever been punished with Tenn. Code Ann. § 39-17-432’s sentencing enhancement. *See Appendix A-1.*

129. In total, only 62 defendants have ever received an enhanced sentence pursuant to Tenn. Code Ann. § 39-17-432 in Davidson County. *Id.*

130. With the sole exception of Mr. Bryant, no defendant in Nashville has ever been sentenced under Tenn. Code Ann. § 39-17-432 who did not have prior adult criminal history. *See Appendix A-2.*

131. Given the residential, location-based nature of the sentencing enhancement at issue, Mr. Bryant likely would not even have been eligible for an enhanced sentence under Tenn. Code Ann. § 39-17-432 but for his poverty. *See, e.g., Exhibit 18*, p. 3.

132. Specifically, if Mr. Bryant had lived in a suburban community zoned strictly for residential use, *see, e.g.,* Image at ¶ 103, then he would have been eligible for release after serving just two years and five months in prison. *See Exhibit 17*, p. 3.

133. Because Mr. Bryant lived in the Edgehill Housing Projects, however, Mr. Bryant must serve a mandatory minimum sentence of at least fifteen (15) years before he even becomes eligible for parole.

134. Critically, the length of Mr. Bryant’s sentence also turned on the timing of his offense, rather its severity or his own culpability.

135. Specifically, Mr. Bryant was punished much more severely for his crime

because he committed it in 2009, rather than in 2014 or later.

136. In the time since Mr. Bryant's conviction in 2009, the use of Tenn. Code Ann. § 39-17-432's intensely punitive sentencing enhancement has been reformed in at least three significant ways.

137. *First*, the Tennessee Supreme Court reformed Tenn. Code Ann. § 39-17-432 to permit eligibility for judicial diversion—an option that was not clearly available to Mr. Bryant at the time of his sentencing. *See Dycus*, 456 S.W.3d at 929 (“[W]e hold that the mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under the Act ineligible for judicial diversion.”).

138. Owing to his status as a first-time, non-violent offender, Mr. Bryant would have been a strong candidate for diversion if this option had been available to him.

139. Mr. Bryant's candidacy for diversion also would have been supported by his deep and extensive roots in his community, which still supports him today. *See, e.g., Exhibit 2* (Affidavit of State Representative Brenda Gilmore); *Exhibit 3* (Affidavit of Clinton Gray); *Exhibit 4* (Affidavit of Nashville NAACP President Ludy Wallace); *Exhibit 5* (Affidavit of Tennessee State NAACP Chair Marilyn Brown); *Exhibit 6* (Affidavit of Chenika Miller); *Exhibit 7* (Affidavit of Janice Blackburn); *Exhibit 8* (Affidavit of Kim D. Ross); *Exhibit 9* (Affidavit of Christal Williams); *Exhibit 10* (Affidavit of LaShana Bryant); *Exhibit 11* (Affidavit of Mason Caples); *Exhibit 12* (Affidavit of Allencia Blackburn); *Exhibit 13* (Affidavit of Annetta Bryant); *Exhibit 14* (Affidavit of Miesha Bryant); *Exhibit 15* (Affidavit of Erica Howse); *Exhibit 16* (Affidavit of Steve Beach).

140. If Mr. Bryant had received judicial diversion, then he would not have served any time in prison at all. Instead, however, Mr. Bryant has been incarcerated for the past

nine (9) years, with between 6-8 years left to serve.

141. Second, in the time since Mr. Bryant's conviction, the Tennessee Supreme Court has clarified that courts cannot enhance sentences pursuant to Tenn. Code Ann. § 39-17-432 if a defendant is convicted of facilitation. *Gibson*, 506 S.W.3d at 452 (“[W]e hold the Act does not apply to a conviction for facilitation.”).

142. During his prosecution, Mr. Bryant could have resolved this case as a conviction for facilitation. See **Exhibit 20** (Affidavit of Joy S. Kimbrough, Esq.). However, he did not do so due to the Parties' mutual misunderstanding that Tenn. Code Ann. § 39-17-432's mandatory sentencing enhancement applied to facilitation convictions. *Id.*

143. Because an unenhanced facilitation conviction would have rendered Mr. Bryant eligible for both early parole eligibility and a significantly reduced sentence, such a resolution would have resulted in Mr. Bryant being released from prison several years ago. *Bryant*, 460 S.W.3d at 530 (“[A] conviction for the facilitation of this offense, a Class B felony, could have resulted in a sentence of as little as eight years.”).

144. Third, and most significantly, in the time since Mr. Bryant's conviction, the Respondent has operationally reformed its use of Tenn. Code Ann. § 39-17-432.

145. Specifically, to avoid enforcing Tenn. Code Ann. § 39-17-432 as a strict liability enhancement that undermines its intended purpose, the Respondent now applies Tenn. Code Ann. § 39-17-432 only to defendants who intended to violate its essential purpose of keeping drugs away from children. See **Exhibit 18**.

146. Thus, if Mr. Bryant committed the very same offense today, then he would not even have been prosecuted for the enhancement under which he was convicted. *Id.*

147. Disturbingly, prior to the Respondent's reformed use of Tenn. Code Ann. §

39-17-432, Davidson County's application of Tenn. Code Ann. § 39-17-432 was unmistakably race-based. See **Appendix A-1**.

148. In Nashville, nearly 90% of the defendants who received Tenn. Code Ann. § 39-17-432's enhancement were black or Latino, notwithstanding the fact that people of color use and sell drugs at approximately the same rates as their white counterparts. *Id.*

149. "Relying on race to impose a criminal sanction 'poisons public confidence' in the judicial process." *Buck v. Davis*, 137 S. Ct. 759, 766 (2017) (quoting *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015)).

150. Taken together: if Mr. Bryant had been prosecuted at any time following the Respondent's reformed use of Tenn. Code Ann. § 39-17-432 in 2014; or if he had been prosecuted after the Tennessee Supreme Court's 2015 decision in *State v. Dycus*, 456 S.W.3d 918 (Tenn. 2015); or if he had been prosecuted after the Tennessee Supreme Court's 2016 decision in *State v. Gibson*, 506 S.W.3d 450 (Tenn. 2016); or if he had been rich or white rather than poor and black; then Mr. Bryant would not have received the severe 17-year sentence for a first-time, non-violent offense that he did.

### **3. Sentences Imposed for Commission of the Same Crime in Other Jurisdictions.**

151. Many states have adopted some version of a drug free school zone law.

152. Tennessee's sentencing enhancement for school zone offenses, however, is almost unparalleled in its severity. See **Exhibit 18**, p. 4 ("Tennessee has one of the more restrictive drug-free zone laws in the country.").

153. Tennessee is one of just three states in the union to elevate an underlying drug offense committed in a school zone by a full felony class. See NICOLE D. PORTER & TYLER CLEMONS, THE SENTENCING PROJECT, DRUG-FREE ZONE LAWS: AN OVERVIEW OF STATE

POLICIES 3 (2013) (“Kansas, Nebraska, and Tennessee elevate the felony class of the underlying drug offense when it is committed within a drug-free zone, thereby exposing the defendant to harsher penalties.”), <http://sentencingproject.org/wp-content/uploads/2015/12/Drug-Free-Zone-Laws.pdf> (attached hereto as **Exhibit 23**).

154. Consequently, Tennessee stands nearly alone in applying such a severe sentencing enhancement to Mr. Bryant’s conduct. *Id.*

155. This idiosyncrasy provides an objective, reliable indication that Mr. Bryant’s enhanced sentence does not conform to national, contemporary standards of decency. *See Penry v. Lynaugh*, 492 U.S. 302, 331 (1989) (holding that, for purposes of an Eighth Amendment claim, “[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures”).

156. In fact, Tenn. Code Ann. § 39-17-432’s sentencing enhancement does not even conform to Tennesseans’ standards of decency. *See Joshua Cannon, 80 Percent of Tennesseans Want Drug-Free School Zone Law Reform*, MEMPHIS FLYER (Aug. 31, 2016, 12:56 PM), <https://www.memphisflyer.com/NewsBlog/archives/2016/08/31/80-percent-of-tennesseans-want-drug-free-school-zone-law-reform> (“About 84 percent of those polled support major or minor reforms to the law. Tennessee residents — 62 percent — say policy that clarifies the law’s intent should enhance penalties when children are present. Support for reform garnered interest from both parties, with 90 percent of Democrats and 80 percent of Republicans supporting a reform to the law.”) (attached hereto as **Exhibit 24**).

157. To account for both the racially discriminatory effects of broadly-defined drug-free zones and their failure to provide deterrent value, “[m]any other states already reviewed their drug-free zone legislation, found substantial defects, and made beneficial

corrections to their law.” Devon C. Muse, *Tennessee’s Drug-Free Zone Law: Defective By Design?*, MEMPHIS LAWYER 16 (August 25, 2016), [https://www.memphisbar.org/sites/499/uploaded/files/DRUG\\_FREE\\_ZONE\\_REPORT.pdf](https://www.memphisbar.org/sites/499/uploaded/files/DRUG_FREE_ZONE_REPORT.pdf) (attached hereto as **Exhibit 25**). Cf. Devon C. Muse, *Tennessee’s Drug-Free Zone Law: A Comparative Analysis*, MEMPHIS LAWYER 16 (August 25, 2016), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2833370](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2833370) (“[m]any states, including those with localities similar to Tennessee, reviewed their [Drug-Free Zone Laws], found significant unwanted effects, and made beneficial changes to their law.”). Tennessee, however, has not made any changes at all.

158. As one such example, “seven states—Alaska, Georgia, Louisiana, Montana, New Jersey, Texas, and Washington—apply an exception to their drug-free zone laws if the offense occurs within a private residence so long as no children are present. . . .” See **Exhibit 23**.

159. In the instant case, such an exception would have prevented Mr. Bryant’s sentence from being enhanced.

160. Other states have adopted reforms like “chang[ing] state law to grant judges discretion in applying the school zone penalty in certain drug offenses based on ‘good cause.’” *Id.* Tennessee has not adopted this reform, either.

161. Other states took different approaches still. For example, in Indiana:

[T]o address the concerns of the Indiana Supreme Court as well as the issues documented in the DePauw University study, the legislature passed and Governor Mike Pence signed a bill that substantially reformed the state’s law. The bill reduced Indiana’s zones from 1,000 feet to 500 feet and eliminated the zones around public housing complexes and youth program centers. It also added the requirement that a minor must be reasonably expected to be present when the underlying drug offense occurs.

*Id.* at 4.

162. Reforms like these, too, would have protected Mr. Bryant from having his sentence enhanced under Tenn. Code Ann. § 39-17-432.

163. Despite its significant racially discriminatory effects, however—and despite the absence of any evidence that Tennessee’s extraordinarily broad and selectively-applied school-zone enhancement has advanced legislative intent to prevent drug sales in school zones in any meaningful way—Tenn. Code Ann. § 39-17-432 remains legislatively unreformed in any regard.

164. Consequently, and notwithstanding formal legislative acknowledgement that Tenn. Code Ann. § 39-17-432 creates grossly excessive sentencing disparities, *see Exhibit 17*, Tenn. Code Ann. § 39-17-432 remains out of step with the *trend* of jurisdictions that have taken legislative steps to reform their school zone laws as well. This fact, too, supports a finding that Mr. Bryant’s sentence contravenes the Eighth Amendment. *See Atkins*, 536 U.S. at 315 (noting that, for Eighth Amendment purposes, “[i]t is not so much the number of these States that is significant, but the consistency of the direction of change”).

165. Compounding the problem, Davidson County’s own Grand Jury has observed and decried the fact that Tenn. Code Ann. § 39-17-432’s grossly excessive disparity was applied *arbitrarily*, stating:

A consistent decision needs to be reached on when increased penalties are sought for drug-free school zone offenses. **The decision to seek increased penalties resulting from school zone violations seemed to be arbitrarily reached at times. The law needs to be applied equally, not arbitrarily and capriciously.**

*See Exhibit 19* (emphasis added).

166. As such, a comparison of Tenn. Code Ann. § 39-17-432 to the penalties assessed in other jurisdictions reflects that it is incompatible with the Eighth

Amendment's evolving standards of decency as applied to the circumstances of Mr. Bryant's case.

**B. Mr. Bryant's sentence violates Article I, Section 16 of the Tennessee Constitution as applied.**

167. Based on the grossly disproportionate sentence that Mr. Bryant received—both in absolute terms and compared with other similarly-situated defendants in Nashville and across Tennessee—Mr. Bryant's sentence also violates Article I, § 16 of the Tennessee Constitution.

168. Under similar circumstances, other jurisdictions have released defendants like Mr. Bryant pursuant to the more expansive provisions of their state constitutions. *See, e.g., Steve Visser, Clayton Judge Frees Man, Saying Prison Term Was "Just Not Right", ATLANTA JOURNAL-CONSTITUTION (Jul. 7, 2015, 5:10 PM), <http://www.ajc.com/news/crime--law/clayton-judge-frees-man-saying-prison-term-was-just-not-right/oHJLob6FD2FXrw5ry9AZEI/> (attached hereto as **Exhibit 26**).*

169. With respect to Tennessee's Constitution, our Court of Criminal Appeals has explained that: "Article I, Section 16 of the Tennessee Constitution is subject to a more expansive interpretation than the Eighth Amendment to the federal constitution and, accordingly . . . that the Tennessee Constitution mandates a proportionality inquiry even in noncapital cases." *Smith*, 48 S.W.3d at 170-71 (citing *Harris*, 844 S.W.2d at 602-03).

170. In evaluating whether a sentence is excessive under Article I, Section 16, our Court of Criminal Appeals has instructed that:

Determining whether a penalty for a particular offense raises an inference of gross disproportionality entails a comparison between the gravity of the offense and the harshness of the penalty. Factors relevant to the gravity of an offense include (1) the nature of the crime, including whether society views the crime as serious or relatively minor and whether the crime is violent or non-violent; (2) the circumstances of the crime, including the

culpability of the offender, as reflected by his intent and motive, and the magnitude of the crime; and (3) the existence and nature of any prior felonies if used to enhance the defendant's penalty.

*Smith*, 48 S.W.3d at 171.

**1. Nature of the Crime**

171. Mr. Bryant's crime was a non-violent drug sale to an adult. By any rational measure, non-violently selling drugs to an adult is not as serious as committing a violent crime such as Rape, Second Degree Murder, Aggravated Robbery, Aggravated Vehicular Homicide, or Attempted First Degree Murder. As such, a non-violent drug sale should not be punished more severely than any of these crimes—much less all of them. See **Exhibit 17**, p. 2.

172. Notwithstanding the permitted punishment for school zone offenses, Tennessee considers violations of Tenn. Code Ann. § 39-17-432 to be less significant than other serious felonies as a matter of law, because unlike serious felonies, Tenn. Code Ann. § 39-17-432 violations are eligible for judicial diversion. See *Dycus*, 456 S.W.3d at 929 (“[W]e hold that the mandatory minimum service provision of the Drug-Free School Zone Act does not render offenses committed under the Act ineligible for judicial diversion.”).

**2. Circumstances of the Crime**

173. The circumstances of Mr. Bryant's crime were non-violent.

174. Mr. Bryant's culpability is diminished by the fact that one or more members of the first jury that tried him determined that he had been entrapped by a government informant.

175. While illegal, the circumstances of Mr. Bryant's crime were no worse than the hundreds of thousands of other, similar drug sales that have occurred in this jurisdiction since the legislature enacted Tenn. Code Ann. § 39-17-432.

176. Because the controlled substances at issue were procured by a government informant, the magnitude of Mr. Bryant's crime was also less severe than other, similar drug sales, because no member of the public was harmed.

**3. The Existence and Nature of Any Prior Felonies Used to Enhance the Defendant's Penalty.**

177. Mr. Bryant has no prior adult felony convictions.

178. Mr. Bryant also has no prior adult misdemeanor convictions. In fact, Mr. Bryant has no prior adult criminal record at all.

179. Mr. Bryant's lack of a prior criminal record renders his sentence unique in application, severity, and kind.

180. In sharp contrast to recidivist offenders, Mr. Bryant's lack of a prior adult criminal record weighs heavily in favor of a finding that Tenn. Code Ann. § 39-17-432 is unconstitutional as applied to him. *Cf., e.g., Smith*, 48 S.W.3d at 172 (highlighting the fact that a defendant's enhanced sentence was "the direct result not merely of an isolated instance of possession inside a school zone of nine or ten rocks of crack cocaine with intent to sell, but of a pattern of drug dealing evidenced by his seven prior convictions of felony drug offenses and his consequent status as a career offender.") (emphasis added).

181. Accordingly, Mr. Bryant's grossly excessive sentence is also incompatible with the more protective provisions of Article I, Section 16 of the Tennessee Constitution. *Smith*, 48 S.W.3d at 171.

**C. The Court Should Suspend the Balance of Mr. Bryant's Sentence Pending Gubernatorial Action on an Application for Pardon or Commutation.**

182. Given the unique facts of Mr. Bryant's case, the Court should suspend the remainder of Mr. Bryant's sentence pursuant to Tenn. Code Ann. § 40-22-101 pending

gubernatorial action on an application for a pardon or commutation.

183. Tenn. Code Ann. § 40-22-101 provides that: “In case of the conviction and sentence of a defendant to imprisonment, the presiding judge may, in all proper cases, postpone the execution of the sentence for the amount of time as may be necessary to make application to the executive for a pardon or commutation of punishment.” *Id.*

184. Admittedly, this provision for relief has fallen into “disuse[]” in Tennessee. *See* Benjamin K. Raybin, *Pardon Me: How Executive Clemency Works in Tennessee (and How It Doesn't)*, 52 TENN. B.J. 12 (2016) (noting the “still-existing but disused statutory procedure for judicial recommendations for a pardon or commutation”), <http://www.tba.org/journal/pardon-me> (attached hereto as **Exhibit 27**).

185. Even so, it remains available as a remedy in both trial courts and appellate courts. *See* 11 DAVID L. RAYBIN, TENN. PRAC. CRIM. PRAC. & PROCEDURE § 33:6 (2016) (“The trial judge or an appellate court may also stay the execution of the sentence so that the defendant can apply for relief from the governor.”) (citing Tenn. Code Ann. § 40-22-101 and *Allen v. State*, 8 Tenn. 294, 299 (1827) (“Let execution of the judgment in this case be suspended until the further order of this Court, except as to the costs . . . .”))).

186. Given the exceptional facts of Mr. Bryant’s case and his substantially mitigating personal circumstances, including the fact that the very prosecutor who prosecuted him supports his early release, *see* **Exhibit 1**, providing relief under Tenn. Code Ann. § 40-22-101 is appropriate in this rare, extraordinarily worthy instance.

187. Independent of the constitutionality of Mr. Bryant’s sentence, there is little doubt that if Mr. Bryant had committed *the very same offense* today, then he would not have received the sentence that he did.

188. Several independent facts—the subsequent availability of judicial diversion,

the subsequent inapplicability of Tenn. Code Ann. § 39-17-432 to facilitation convictions, and the Respondent's voluntary change in policy after Mr. Bryant's conviction—all individually and collectively compel this conclusion.

189. Further, Mr. Bryant's uncharacteristically severe sentence resulted from a combination of his poverty and an egregious racial disparity in the Respondent's former application of Tenn. Code Ann. § 39-17-432 that deserves a remedy. *See* **Appendix A-1**.

190. If Mr. Bryant had lived in Belle Meade or in another suburban neighborhood zoned primarily for residential use—rather than living in the Edgehill housing projects—then his sentence likely would not have qualified for enhancement under Tenn. Code Ann. § 39-17-432, because his residence likely would not have been located inside an enhancement zone.

191. Additionally, if Mr. Bryant had not been a person of color, then he would have been significantly less likely to be prosecuted under Tenn. Code Ann. § 39-17-432 under the Respondent's prior, since-reformed charging policy. *See* **Appendix A-1**.

192. Moreover, the Respondent has previously applied Tenn. Code Ann. § 39-17-432 in a manner that Davidson County's own Grand Jury decried as arbitrary, capricious, and incompatible with the interests of justice. *See* **Exhibit 19**.

193. Further, Mr. Bryant's own former prosecutor supports his immediate release, reasoning that further punishment would be purposeless. *See* **Exhibit 1**.

194. Further still, Mr. Bryant's personal circumstances are substantially mitigating.

195. In particular, Mr. Bryant continues to have overwhelming support from his community, and he remains committed to improving it. *See, e.g.,* **Exhibit 2** (Affidavit of State Representative Brenda Gilmore) ("It is with great enthusiasm that I recommend the

release of Calvin Bryant, Jr. Mr. Bryant is a young man who made a mistake at a young age and has more than paid for that mistake. Mr. Bryant is a non-violent offender who was sentenced to 17 years in prison for a drug crime. He has served nearly 10 years of that sentence. Further incarceration benefits no one. . . . If released, I will personally make every effort to see that Mr. Bryant is successfully re-acclimated into the community. I recommend his release without hesitation.”); **Exhibit 3** (Affidavit of Clinton Gray) (“Since Calvin’s incarceration we have spoken many times about his plans to become a positive example for kids within the Nashville Community. Upon his release I am committed to providing a steady job of employment that will assist him with his vision of becoming a positive influence for our city.”); **Exhibit 4** (Affidavit of Nashville NAACP President Ludy Wallace) (“Upon his release he plans to start a non-profit program geared toward preventing youth from joining gangs. We fully and unequivocally support the release of Calvin Eugene Bryant, Jr. He has more than paid his debt for this non-violent first time drug offense. Any relief from his extremely long sentence would be appreciated.”); **Exhibit 5** (Affidavit of Tennessee State NAACP Chair Marilyn Brown) (“It is now the desire of the community to give back to Mr. Bryant and assist with his release in any way possible. Mr. Bryant is a kind, respectful, and thoughtful young man. He is an asset to his community. He has more than paid for any past mistakes and I respectfully request that he be released.”); **Exhibit 6** (Affidavit of Chenika Miller) (“I know he can’t bring back all the years he has lost but he can make up for them. He always says he wishes he could just be able to care for his mom . . . . He wants to be a positive role model to the youth and teach them to stay on the right path . . . . I am all for people being punished but his punishment for a non-violent offense the first time is inequitable.”); **Exhibit 7** (Affidavit of Janice Blackburn) (“If given the opportunity for early release, I, myself, as

well [as] Calvin and many other members, both family and friends, vow to keep him productive and out of trouble by using what he has learned during this experience to promote positivity throughout the great city of Nashville and beyond.”); **Exhibit 8** (Affidavit of Kim D. Ross) (“[I]f he’s given another chance, I can truly say and mean it without any hesitation that Calvin will not be coming back to that facility or any other facility.”); **Exhibit 9** (Affidavit of Christal Williams) (“I know he has learned from this situation. He is looking forward to helping others learn how to avoid situations like his and teach them how to follow the right path I think Calvin Bryant, Jr. will be able to take this negative and turn it into a beautiful positive and help change lives of many of our youth who are facing some of the same situations.”); **Exhibit 10** (Affidavit of LaShana Bryant) (““If he was granted the opportunity to come home, his support system would greatly help him adjust to society and he will become a great impact on our family as well as the youth. I pray that this letter is taken under consideration and our family will be able to be complete once more.”); **Exhibit 11** (Affidavit of Mason Caples) (“Calvin deserves a chance to prove that he has been rehabilitated. He has a family, a community, and will have a new niece or nephew that will catalyze Calvin to stay on the right path in life.”); **Exhibit 12** (Affidavit of Allencia Blackburn) (“In my opinion I believe that he has learned so much from this previous experience . . . . Over the term of his absence he has grown so much both spiritually and mentally. After losing his father while incarcerated, his main focus is his mother’s health and the wellbeing of his immediate family.”); **Exhibit 13** (Affidavit of Annetta Bryant) (“My son is a very good person with a good personality and he stays in good spirits. I pray every single day that I am able to see him be released. I feel like he has served his debt to society and he deserves a second chance to prove to himself as well as society that he is a good individual.”); **Exhibit 14** (Affidavit

of Miesha Bryant) (“Calvin has been such a big part of my kids’ life since the loss of their father. He has mentored, helped with homework and consoled my kids over phone calls and letters for about 2 years now. . . . Calvin is such a blessing to us. . . . This is a person that has learned from their mistakes and has changed not just for himself but for his family, the youth, and community.”); **Exhibit 15** (Affidavit of Erica Howse) (“As we see daily the rise in youth violence in Nashville, releasing Calvin will allow him to give back to his community and offer our young man an opportunity to engage in dialogue and focus on their academics instead of the streets. Our community needs someone who is compassionate about them and who can honestly speak about their road and point them into a different direction. His faithful leadership will breed future leaders and the community will be able to reap the rewards of successful citizens.”); **Exhibit 16** (Affidavit of Steve Beach) (“My friend Calvin would like a second chance at life, where he can help kids of the community.”).

196. In fact, Mr. Bryant has already begun his efforts to improve his community during his term of incarceration by providing gang avoidance education and attempting to curb youth violence. See **Exhibit 28** (Positive Inner City Kids Non-Profit Corporation Charter and accompanying state filings).

197. Specifically, Mr. Bryant founded the non-profit organization “Positive Inner City Kids” (PICK) from Riverbend prison in 2015, the purpose of which is to help inner-city youth stay in school and avoid gangs and violence. See *id.*

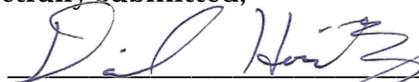
198. As such, Mr. Bryant merits sentencing relief pursuant to Tenn. Code Ann. § 40-22-101 as well.

**CONCLUSION**

For the foregoing reasons, as applied to the unique circumstances of his case, Mr. Bryant's grossly disproportionate sentence violates the Eighth Amendment to the United States Constitution; violates Article I, § 16 of the Tennessee Constitution; and justifies postponing the execution of the balance of his sentence pursuant to Tenn. Code Ann. § 40-22-101 pending gubernatorial action on an application for pardon or commutation. As such, the instant Petition for sentencing relief should be **GRANTED**.

Respectfully submitted,

By:



Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

*Pro Bono Counsel for Petitioner*

**VERIFICATION**

Pursuant to Tenn. Code Ann. § 40-30-104(e), I, Daniel A. Horwitz, having been duly sworn according to law, hereby state that I have made an independent investigation into the averments stated herein, and that the facts, statements, and exhibits contained in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Pursuant to Tenn. R. Civ. P. 72, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

By:   
Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

*Pro Bono* Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of November, 2017, a true and exact copy of the foregoing was hand-delivered via the Criminal Court Clerk's drop box to:

District Attorney Glenn R. Funk, Esq.  
Assistant District Attorney Wesley King, Esq.  
Assistant District Attorney Ed Ryan, Esq.  
Office of the District Attorney General  
Washington Square Building, 5<sup>th</sup> Floor  
222 2<sup>nd</sup> Avenue North, Suite 500  
Nashville, TN 37201-1649

By:

  
\_\_\_\_\_  
Daniel A. Horwitz, Esq.

# Exhibit 1

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**AFFIDAVIT OF ROBERT E. MCGUIRE**

---

I, Robert E. McGuire, declare under penalty of perjury that the following is true and correct:

- 1.) My name is Robert Elliott McGuire, I am over the age of eighteen (18) and am competent to testify about the matters contained in this affidavit.
- 2.) I am currently licensed to practice law in the State of Tennessee and have been since 2001. My Board of Professional Responsibility number is 021594.
- 3.) I was an Assistant District Attorney General for the 20<sup>th</sup> Judicial District (Nashville-Davidson County) from 2001 to 2014.
- 4.) During my tenure as an Assistant District Attorney General, I assisted another prosecutor with the prosecution of Calvin Bryant for the sale and possession of narcotics in a Drug Free School Zone.
- 5.) As I recall, Mr. Bryant was arrested on that indictment in May of 2008, did not make bond and remained in custody pending trial.
- 6.) I do not recall if Mr. Bryant was made a plea agreement offer before the trial. As I was not the primary prosecutor on that case, I would not have been the prosecutor to make a plea agreement offer on the case.
- 7.) As I recall, Mr. Bryant was convicted of those offenses after a jury trial in February of 2009. I participated in representing the State of Tennessee at that trial.

- 8.) In the spring of 2009, Mr. Bryant was subsequently sentenced to 17 years in prison at 100% with the percentage of service being mandatory and fixed by the fact that he was convicted of a narcotics offense while in a Drug Free School Zone
- 9.) At this time, I believe that Mr. Bryant has been in continuous confinement for over nine years (from May of 2008 to present) with over eight years of that incarceration coming post-conviction.
- 10.) According to the latest information available from the Tennessee Department of Corrections Mr. Bryant's sentence is scheduled to conclude on May 23, 2023, a little less than six years from the date of the signing affidavit.
- 11.) I fail to see how an additional six years of incarceration will improve Mr. Bryant's amenability to correction or would be required to maintain public safety.
- 12.) I additionally fail to see how his release at a time earlier than 2023 – and after over nine years of incarceration – will deprecate the seriousness of the offenses for which he was convicted or significantly imperil the public safety.
- 13.) I am no longer a prosecutor and I cannot speak for the Office of the District Attorney General for the 20<sup>th</sup> Judicial District, therefore I only speak for myself. But as a prosecuting attorney for Mr. Bryant I would personally not oppose a clemency or early release petition by him given the long term of incarceration he has already served and the non-violent nature of the offenses for which he was convicted.

FURTHER THIS AFFIANT SAYETH NOT.

*Robert E. McGuire*  
ROBERT E. MCGUIRE

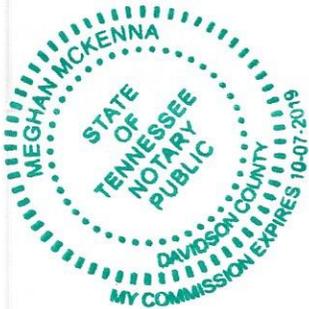
STATE OF TENNESSEE            )  
COUNTY OF DAVIDSON        )

I, Robert E. McGuire, after first being duly sworn according to the law, make oath and state that I am the Affiant in the foregoing Affidavit; that I have read my statements contained therein, which are true and correct to the best of my knowledge, information and belief; and which are not made out of levity or collusion with the Respondent, but out of sincerity and truth for the causes alleged in the pleading.

*Robert E. McGuire*

SWORN TO AND SUBSCRIBED before me this the 2 day of August, 2017

*Meghan McKenna*  
NOTARY PUBLIC



My commission expires: 10-7-19

# Exhibit 2



**BRENDA GILMORE**  
54<sup>TH</sup> LEGISLATIVE DISTRICT  
DAVIDSON COUNTY

**MEMBER OF COMMITTEES**

**MEMBER**  
BUSINESS AND UTILITIES  
BUSINESS AND UTILITIES SUB  
FINANCE

FISCAL REVIEW COMMITTEE  
TENNESSEE BLACK CAUCUS  
TENNESSEE STEM SCIENCE TECHNOLOGY  
NATIONAL STATE DIRECTOR, WOMEN IN GOVERNMENT  
EXECUTIVE BOARD NATIONAL BLACK CAUCUS OF  
STATE LEGISLATORS (NBCSL)  
PRESIDENT, WOMEN'S NETWORK NCSL

# House of Representatives State of Tennessee

**NASHVILLE**

LEGISLATIVE OFFICE:  
26 LEGISLATIVE PLAZA  
NASHVILLE, TENNESSEE 37243-0154  
(615) 741-1997  
FAX: (615) 253-0361  
EMAIL: rep.brenda.gilmore@capitol.tn.gov

October 17, 2017

To Whom It May Concern,

It is with great enthusiasm that I recommend the release of Calvin Bryant, Jr. Mr. Bryant is a young man who made a mistake at a young age and has more than paid for that mistake.

Mr. Bryant is a non-violent offender who was sentenced to 17 years in prison for a drug crime. He has served nearly 10 years of that sentence. Further incarceration benefits no one.

Mr. Bryant had and continues to have a bright future ahead. Prior to his incarceration, Mr. Bryant was a gifted athlete who generously donated his time to the youth and his community. If released, I will personally make every effort to see that Mr. Bryant is successfully re-acclimated into the community. I recommend his release without hesitation.

Sincerely,

Brenda Gilmore  
State Representative 54th District



10/17/2017

# Exhibit 3



# Slim & Husky's Pizza Beeria

To Whom It May Concern,

Calvin Bryant has been one of my closest friends since we were 8 years old. As young kids we've always held each other accountable through education, sports and community. Since Calvin's incarceration we have spoken many times about his plans to become a positive example for kids within the Nashville Community. Upon his release I am committed to providing a steady job of employment that will assist him with his vision of becoming a positive influence for our city. At Slim + Husky's we believe in second chances for those that have served jail time. Our company will help provide Calvin with a skill set that he can use for years to come by helping him build a great life for him and his family. I also look forward to personally assisting my friend in his development through communication and accountability as we've done as kids.

Best Regards,

Clinton Gray III  
President of Slim + Husky's Pizza Beeria  
615.500.1048

State of: Tennessee County of: Davidson  
Subscribed and sworn to before me this 11th day of October, 2017.  
By Clinton Gray Personally known  OR produced identification

Shannon Cohen  
Notary Public (Print)

Shannon Cohen  
Notary Public (Signature)

My Commission Expires: 1/6/2020



# Exhibit 4

September 28, 2017

To whom it may concern:

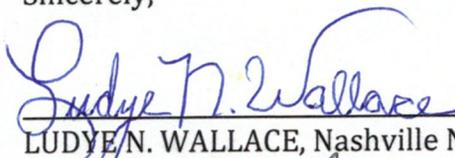
This letter is written on behalf of Calvin Eugene Bryant, Jr., who is currently serving a fifteen (15) year sentence in the Tennessee Department of Correction for violating the Drug Free School Zone law. Calvin has been incarcerated since May, 2008. He was 22 years old at the time. His incarceration stems from a non-violent, first time drug offense.

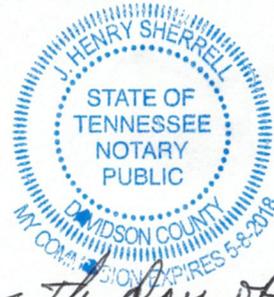
Calvin was born in Nashville and grew up in the Edge Hill Public Housing Community. His parents grew up in the same housing community. As a child, Calvin played many sports, however, showed exceptional talent and ability in football. He attended Hillsboro Comprehensive High School where he played on the varsity football team all four (4) years. As a football player, Calvin made 3 state championship appearances. As football captain he led his team to victory in the State Championship. Calvin was heavily recruited by the University of Mississippi (Ole Miss), University of Tennessee, University of Florida, University of Oklahoma, University of South Carolina, as well as other Colleges and Universities. Yahoo Sports reported that the Ole Miss 2003 recruiting class needed a fullback and Calvin Bryant may fill that spot. "Bryant has great size and speed to be an SEC fullback." (Yahoo Sports)

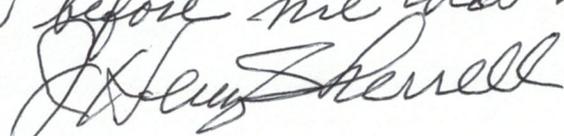
At the time of his arrest, Calvin Bryant, Jr. was an exemplary employee for Coca-Cola and a full-time student at Tennessee State University. Additionally, he volunteered for Habitat for Humanity. While incarcerated, Calvin's father passed away from Congestive Heart Failure (CHF). His mother currently suffers from Chronic Obstructive Pulmonary Disease (COPD) and CHF. Calvin is an only son. Upon his release he plans to start a non-profit program geared toward preventing youth from joining gangs.

We fully and unequivocally support the release of Calvin Eugene Bryant, Jr. He has more than paid his debt for this non-violent first time drug offense. Any relief from his extremely long sentence would be appreciated.

Sincerely,

  
LUDY N. WALLACE, Nashville NAACP President



Sworn before me this 28th day of Sept 2017  


# Exhibit 5

9/20/17

To Whom It May Concern:

I am writing this letter to express my full support for the release of Calvin Bryant. Prior to his incarceration Mr. Bryant spent countless hours volunteering with youth sports. His football career was impeccable and he gave back to the community. It is now the desire of the community to give back to Mr. Bryant and assist with his release in any way possible. Mr. Bryant is a kind, respectful, and thoughtful young man. He is an asset to his community. He has more than paid for any past mistakes and I respectfully request that he be released.

Sincerely, 

Marilyn Brown,  
TN State NAACP Labor & Industry Chair  
Community Organizer

State of TN  
County of Davidson  
Subscribed and sworn to (or affirmed) before me this  
20 day of September 2017  
By Marilyn Brown  
Personally known  OR produced identification \_\_\_\_\_  
Type identification produced \_\_\_\_\_

  
Notary Public



# Exhibit 6

Monday, August 7, 2017

Dear Sir/Madam

I am writing this letter on behalf of Calvin Bryant whom I've known more than half of my life. My name is Chenika Miller Calvin has been an incorruptible person since I have known him. Calvin is not only my childhood friend he is my best friend and companion. It saddens me to see him away from his family and friends for so long. He grew up in a 2 parent household which most kids coming from where he came from didn't have. His parents raised him well. He was a good kid growing up and that never changed. They taught him to be respectful and he always used his manners. Everyone makes mistakes and yes he made a mistake that I know he has learned from. He has lost his father since he's been incarcerated. His mother has a chronic illness and he really loves and cherish his mother with all his heart. I know he can't bring back all the years he has lost but he can make up for them. He always says he wishes he could just be able to care for his mom. Being incarcerated with a sick mother and losing his father has taught him to never take life for granted. Calvin is such a positive person still through all he has been through he is altruistic and caring. Calvin has been a role model to so many people through football and just being the friendly generous person he is. I admire how compassionate he is. Calvin is a big man because he has a big loving heart of gold. Whenever we talk Calvin always tells me he can't wait to be a free man. He wants to be a positive role model to the youth and teach them to stay on the right path. I know what he done wasn't right but he has lost 9 years of his life already and counting which is unjustified. I am all for people being punished but his punishment for a nonviolent offense the first time is inequitable.

Chenika Miller

*Chenika Miller*



*Lesa Howard*  
8.7.17

# Exhibit 7

To Whom This May Concern:

My name is Janice Blackburn and I am writing to you on behalf of my nephew Calvin Bryant Jr. As you may know I have known Calvin all of his life and has considered him more of a son than a nephew. Since the day that he was born he has always been a light to our family. He is kind, loving, supportive, protective, and a very active and loved member of our community. Although incarcerated at a very young age, Calvin had already began to be what many considered a mentor and has many plans of continuing youth and community outreach upon release. His passion is to reach many people both young and old by encouragement, testimony, and the support that lacks in the neighborhood of which he grew. An uncle and great uncle of two very young boys, Calvin seeks to be a part of their growth serving as not only an uncle but a father figure as well. He seeks to instill integrity, the importance of education, his love for sports, family, and many other important aspects needed to ensure that they become influential and respectful members of society. We as a family, Calvin included, believe in the justice system, and are in no way disregarding the wrong in which he participated, however we do feel that he has served his time in relation to the crime. As a man who has no prior convictions before the one in question, I strongly believe that he deserves a second chance to prove himself an obedient and respected member of society. If given the opportunity for early release I, myself, as well Calvin and many other members, both family and friends, vow to keep him productive and out of trouble by using what he has learned during this experience to promote positivity throughout the great city of Nashville and beyond.

Thank You,

*Janice Blackburn*

Janice Blackburn

(615)-424-7177

The foregoing instrument was acknowledged (or affirmed or attested to-as client designates) before me this 8 date of Aug, 2017 by Janice Blackburn who personally known to me or has produced \_\_\_\_\_ as identification and who did take an oath. My Commission expires 7-2-18  
Notary Public Signature [Signature]



# Exhibit 8

Joy S. Kimbrough  
Attorney at Law  
306 Gay Street, Suite 102  
Nashville, TN 37201

I am writing this letter of recommendations for Calvin Bryant release.

I've known Calvin since birth. He grew up with my kids and attended the same schools throughout the years. Regardless of his current situation, Calvin has always been and still is a positive person. True he's made mistakes along the way and so have I and everyone else. However, if he's given another chance, I can truly say and mean it without any hesitation that Calvin will not be coming back to that facility or any other facility. He's had a pretty good life and well respected. He had been working with young kids, taking care of family as well as friends before his incarnation. While being incarcerated he been in programs to even further his growth.

If I or anyone else needed anything he would see to it getting done.

Thanking you in advance,



Kim D. Doss  
2161 Rock City Street  
Nashville, TN 37216  
(615) 596-0917



Carla Denise Lear  
exp. 3/23/2019  
Williamson County, TN

# Exhibit 9

August 4, 2017

To whom it may concern,

I have known Calvin Bryant, Jr since he was a child. He was raised to be an upstanding person and I truly feel that he displays these traits. He unfortunately made a mistake that landed him in this position, but I know he has learned from this situation. He is looking forward to helping others learn how to avoid situations like his and teach them how to follow the right path. I think Calvin Bryant, Jr. will be able to take this negative and turn it into a beautiful positive and help change lives of many of our youth who are facing some of the same situations. He is the upstanding person his parents raised him to be.

Sincerely,

*Christal Williams*

Christal Williams

615-977-6939 cell phone



My Commission Expires Mar. 10 2019

*Daniel E. Best*

# Exhibit 10

To Whom It May Concern:

My name is LaShana Bryant and I am writing this letter on behalf of my brother Mr. Calvin Bryant, Jr. Calvin has been incarcerated since May 16, 2008 and it has affected our family in a major way. Our father passed away eleven months after he was incarcerated and our mother has developed several health issues. Calvin is not perfect, but he is a great man that has definitely grown and matured over the years. I pray that he is allowed a second chance to be released so that our family will be able to put this behind us and move forward. If he was granted the opportunity to come home, his support system would greatly help him adjust to society and he will become a great impact on our family as well as the youth. I pray that this letter is taken under consideration and our family will be able to be complete once more.

Sincerely,

*LaShana Bryant*

LaShana Bryant

(615)-485-5200



*LaRance Pardue*

# **Exhibit 11**

8/18/17

To whom it may concern,

Greetings, my name is Mason Caples, I am a Junior in the Bachelor of Science in Nursing program at Tennessee State University. I have lived in Edgehill with Calvin Bryant since the fourth grade. He has always had a smile on his face and brought a smile to the community. To our community he is more than a great football player he is a member of our community. I can remember him holding a car wash to attain funds to pay an elderly woman's rent. To me personally he has been a voice of reason. I remember him stopping me from poorly reacting to a horrible situation in side of our neighborhood. I am grateful to know Calvin because he genuinely cares about others. I have sat threw his trial and I have heard the facts of the case. Calvin's graciousness was used against him. Since then, Calvin has grown as a man. He has learned the hard way not to risk his freedom to help anyone, no matter how much they beg. Calvin is one of the most trusting people that I have known. Calvin's family has also been a cornerstone in the Edgehill community. I remember many nights that his Mother Ann Bryant and his late Father whom we lovingly called "Cootie" invited me and many of the other teenagers in the neighborhood to come into their home and share the loving warmth of their family's hospitality. They instilled manners in many teens who had either lost or never taught to have manners. The Bryant family is a forgiving and god-fearing family. Calvin may have made a few mistakes in life, but I have complete faith that once he is released that he will be a rehabilitated member of society. The community poured our love and support for Calvin during the loss of his father during his incarceration. Calvin's sister Lashana Bryant has been caring for their mother since her heath has declined. She has taken multiple jobs to help care for her and her mother in the absents of Calvin. She is an amazing young woman. Lashana is now with

child and Calvin is now an uncle. Calvin is ready to reunite with his family and fill his much-needed role in his family. Calvin deserves a chance to prove that he has been rehabilitated. He has a family, a community, and will have a new niece or nephew that will catalyze Calvin to stay on the right path in life. Calvin single act of compassion set my life on a new path. To me, this letter possesses the same possibility for him. Thank you for your time and consideration regarding this matter regardless of your decision.

Humbly,

Maryn Gable 8/18/17



Cardelia G. Bender 8/18/17  
Expires 10-7-2019

# Exhibit 12

To Whom It May Concern:

The purpose of this letter is to provide a character reference for Mr. Calvin Bryant Jr., which of whom I've known my entire life.

Growing up the only child of my mother's, Calvin and his siblings served as a brother and sisters to me, although we were actually cousins. As the children of two sisters living directly next door to each other we spent an extensive amount of time together. Four years older than I, he took on the role of a protective big brother, who also taught me a lot. To me he was the coolest guy around because he showed patients toward me that even his little sister at times could not. Because of this, I spent more time with him becoming somewhat of a tomboy, wanting to do everything that he did and liking everything that he liked. From him I got my love for sports, both playing and watching, music, and so much more. Due to his personality, he has always been a person that many people have gravitated to. In a neighborhood full of underprivileged kids, he has always been the one that people turned to for help and guidance. Over the course of many years, he has had many friends stay with him due to their uneasy living situations and has also been the voice of reason in many seemingly out of control situations. As one who has always been big on education, he has actively encouraged many kids of our neighborhood to finish school also giving away money as a stipend for good grades. Outside of his present trouble, the only real trouble he's ever been in, he has worked extremely hard not to become a statistic of his neighborhood by not having an extensive criminal record in neither juvenile, jail, nor prison. As a young man living a free life at twenty-two, the age he was when taken from his family, his main focus was to find a school that believed in his talent and allow him to explore his true calling which was football, the security of his family, and of course being a help to others. This letter is not written in order to make others forget the wrong that he has done and has also owned up to, but, it is written in hopes that someone will see this and no that people, being human make mistakes. The greatest part of

a mistake I believe is learning from it and being given the opportunity to right your wrongs, especially when the wrong that is committed is not one of reoccurring acts.

In my opinion I believe that he has learned so much from this previous experience and is not one who constantly has to bump his head before he believes the term that, "fat meat is indeed greasy". Over the term of his absence he has grown so much both spiritually and mentally. After losing his father while incarcerated, his main focus is his mother's health and the wellbeing of his immediate family. Without him and his father we struggle on the day to day basis as a small family of women, without the guidance, security, and protection that the only men we truly trust bring into our lives. I, as well as the ladies of my family, fully understand that justice must be served, but the time that he received due to his offenses is somewhat hard to believe. In 2012, my father's sons another man that I loved so dearly was murdered. Upon his death his murderer received 25 years, only seven years more than Calvin and I find this to be unfair due to the fact that he killed no one. He simply made a mistake as many young people do and if given the opportunity of a second chance i truly believe that it wont happen again.

Thanks for your time,

Allencia Blackburn

*Allencia Blackburn*

STATE: TN

COUNTY: DAVIDSON

NOTARY: *D. Garramone*  
DAVID GARRAMONE

EXPIRES: 5/5/2020



My Commission Expires May 5, 2020

# **Exhibit 13**

Friday, August 04, 2017

To Whom It May Concern:

My name is Annetta Bryant and I am writing this letter on behalf of my only son Calvin Bryant, Jr. He has been locked up for a total of 9 years (111 months) and it is still hard to adjust without him. Since he has been incarcerated, I have developed diabetes, congestive heart failure, COPD, emphysema, bronchitis, and I'm oxygen dependent.

My son is a very good person with a good personality and he stays in good spirits. I pray every single day that I am able to see him be released. I feel like he has served his debt to society and he deserves a second chance to prove to himself as well as society that he is a good individual. I pray that everything goes well and I'm able to have my son home with me again.

Sincerely,



Annetta Bryant

(615)-474-3332



commission expires: 7/8/2018

# **Exhibit 14**



August 05, 2017

My name is Miesha Bryant and I'm writing this letter on behalf of Calvin Bryant. Calvin has been such a big part of my kids' life since the loss of their father. He has mentored, helped with homework and consoled my kids over phone calls and letters for about 2 years now. They really depend on him for support and he has become such a positive influence in their lives. As my son grows in age I really wish Calvin could be present to help me to raise him to become a man and keep him in sports. Calvin is such a blessing to us. He gave my kids something that as a parent I could not and that's a father figure and for that my kids and I are forever grateful. And I know he could save many more kids in our community just by the changes he has made in his life. Everything about Calvin is positive and his desire to help the community is amazing. This is a person that has learned from their mistakes and has changed not just for himself but for his family, the youth, and community.

Sincerely, Miesha Bryant  
miesha.bryant@vanderbilt.edu

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County of Davidson  
State of Tennessee

SWORN TO AND SUBSCRIBED before me this 7 day of AUGUST 2017.

Signature of Notary Public

My commission expires 8 March 2021.



# Exhibit 15

Honorable Judge Dozier,

I write to you today with great pride on behalf of Calvin Bryant. I have known Calvin for twenty years and found him to be a courageous man. Growing up with Calvin through grade school and high school I have found him to be compassionate, humble and selfless. He has always been transparent through his hardships and adversities and eager to put a smile on someone else's face despite how he may be feeling at that moment.

Calvin believes in supporting his community. He has helped single mothers with school supplies, school clothes and shoes, and paid dues for children to play football. I am able to speak on this because I am a single mother who has been blessed by his gratitude. When I have felt at my worse he has truly been a friend providing a shoulder to cry on, being a listener and never judging me. Calvin has also been a mentor to my boys. If you were to speak to my children they would tell you that Calvin is a superhero. He has been influential in my children's life through newspapers clippings from his football years, and being the role model that his for them. It is Calvin who has allowed them to dream beyond the now and look to their future. They are adamant about attending Hillsboro High school and going to Tennessee State University to play football. If you recall the phrase "I wanna be like Mike", my children chant "I wanna be like Calvin". My children's lives are not the first for him to touch. I can recall from high school, our classmate Clay had Down Syndrome and Calvin treated him as his equal. When you saw Clay you saw Calvin. Calvin has never been one to pick and choose. He has always treated his peers with respect no matter what background, nationality, disability, or sexual preference.

Calvin is and has always been a leader. He always encourages his peers and anyone around him to do the right thing. He leads with great passion, confidence, patience and integrity. He instills confidence and hope in our youth by being there for them meeting them on their level, showing empathy, guiding them, and being an exemplary father figure. I speak of a man with great dignity who loves the city of Nashville. As we see daily the rise in youth violence in Nashville, releasing Calvin will allow him to give back to his community and offer our young man an opportunity to engage in dialogue and focus on their academics instead of the streets. Our community needs someone who is compassionate about them and who can honestly speak about their road and point them into a different direction. His faithful leadership will breed future leaders and the community will be able to reap the rewards of successful citizens.

I am honored to call Calvin Bryant my friend. He is the epitome of a leader and has had an opportunity to reflect on himself. He is a man of his word and if given the chance can assist in changing the lives of our children's and their future. If needed, you may contact me via telephone (615) 364-6587 or email [ehowse39@gmail.com](mailto:ehowse39@gmail.com). Thank you for your time.

Respectfully,

Ms. Erica Howse



STATE OF TN **KEY HAND**  
COUNTY OF DAVISON  
Sworn to (or affirmed) and subscribed before me  
this 7 day of August, 2022  
*Erica Howse*  
Notary Public  
Notary Name  
Type of Identification Personal

# **Exhibit 16**

Calvin Bryant Jr. is a good friend of mine, we have been friends for some time now. He has been a good loyal friend since 2002. A friend that has never change on me. Nowadays that means alot, true friendship and loyalty is rare. The first time I met his mother (Ms. Ann), she invited me into her home and asked if I wanted something to eat. Ms. Ann always cooked and there was always a family setting and a care for the community attitude. This care for the community setting started with Ms. Ann so it's only right for Calvin to inherit the same attitude.

Fridge is another name for Calvin Bryant Jr. He got the name Fridge because is a big guy and he played American's favorite team sport, football. He was apart of a great team that won 2 State Championship during his high school years. Anyone who has played sports has heard the saying "There's no I in team". He was a star player, but you still need your team. They worked together to accomplish great things as a Team!

A lot of great words; family, community, team to have  
in someones' vocabulary when speaking about one's character.  
My friend Calvin would like a second chance at life,  
where he can help kids of the community. If my friend  
says he's going to get out and start a non-profit  
program for kids in the community, then I believe him!  
He has all the great traits instill consciously and  
subconsciously. Please Free my friend Calvin "Fridge"  
Bryant Jr.

Written By Steve Beach  
Team Fridge!

State of Tennessee

County of Davidson

Notary:



My Commission Expires  
November 3, 2020

# Exhibit 17

**Lee Harris**  
Senator

**29<sup>th</sup> Senatorial District**  
Shelby County

**Committees**  
Energy, Agriculture, and Natural Resources  
Judiciary



**Lauren Agee**  
Senior Policy Advisor

**Isaac Kimes, Esq.**  
Research and Policy Analyst

**Shirley A. Frierson**  
Executive Assistant

## **Senate Minority Leader** **State of Tennessee**

### **MEMORANDUM**

To: Senate Judiciary Committee

From: Isaac Kimes, Esq., Research Analyst

Re: Various Research Items on Drug-Free School Zone Law (No Prior Felony Offense; Comparative Sentencing Analysis; Costs; and Raw Data)

Date: March 22, 2017

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Our office has worked with the Department of Corrections to compile detailed information about those incarcerated for drug-free school zone violation and that have no prior felony offense. As you will see below, one hundred and forty-six offenders currently incarcerated for violating the drug-free school zone law have no prior felony convictions.

### **SUMMARY INFORMATION FOR OFFENDERS WITH NO PRIOR FELONY OFFENSE**

- Total: There are 146 offenders out of a total incarcerated population of 436, with 0 prior felony offenses.
- Non-violent offenders: 137 out of 146 (94%) did not commit a violent offense along with the drug-free school zone offense
- Average sentence: 9 years
- Longest sentence: 30 years
- Average age at time of offense: 32 years old
- Youngest at time of offense: 16 years old (Note: This non-violent offender is sentenced to 8 years for cocaine distribution, less than half a gram. He had 0 prior felonies.).

## COMPARITIVE SENTENCING ANALYSIS (PART I)

### Rape

- Unlawful sexual penetration of a victim by the defendant
- Class B Felony, Sentencing Range of 8-12 years (if Range I offender)
- Sentence: 7 years (8 years (min. range) at 85%)

### Aggravated Robbery

- Robbery with a weapon or where victim suffers serious bodily injury
- Class B Felony, Sentencing Range of 8-12 years (if Range I offender)
- Sentence: 7 years (8 years (min. range) at 85%)

### Drug-Free School Zone Offense Example II

- Possession of less than 0.5 grams of cocaine with intent to sell within 1000 feet of a school
- Class C Felony enhanced to Class B, Sentencing Range of 8-12 years (if Range I offender)
- Sentence: 8 years (8 years (min. range) at 100%)

### Aggravated Vehicular Homicide

- Drunk driver with blood alcohol content over 2.0 kills someone
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 11 years (25 years (max range) at 45%)

### Attempted First Degree Murder Where Serious Bodily Injury Occurs

- Attempted murder with intent and the victim suffers serious bodily injury but does not die
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 11 years (15 years (min. range) at 75%)

### Second Degree Murder

- Knowing killing of another
- Class A Felony, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 13 years (15 years (min. range) at 85%)

### Drug-Free School Zone Offense Example I

- Possession of 0.5 grams of meth with intent to sell within 1000 feet of a school
- Class B Felony enhanced to Class A, Sentencing Range of 15-25 years (if Range I offender)
- Sentence: 15 years (15 years (min. range) at 100%)

### COMPARITIVE SENTENCING ANALYSIS (PART II)

<b>CLASSIFICATION</b>	<b>Earliest Incarceration Release INSIDE School Zones</b>	<b>Earliest Incarceration Release OUTSIDE of School Zones</b>
<b>A</b>	<b>15 years</b>	<b>4 years, 6 months</b>
<b>B</b>	<b>15 years</b>	<b>2 years, 5 months</b>
<b>C</b>	<b>8 years</b>	<b>11 months</b>
<b>D</b>	<b>3 years</b>	<b>7 months</b>
<b>E</b>	<b>2 years</b>	<b>4 months</b>

## **COSTS**

### **Drug-Free School Zone Taxpayer Expenditures**

Average operating cost per offender per day for calendar year 2017	<b>\$68.75</b>
Average operating cost per offender per year	<b>\$25,093.75</b>
Cost per year to incarcerate first-time felony drug-free school zone offenders	<b>\$3,663,687</b>
Cost per year to incarcerate non-violent drug-free school zone offenders (421)	<b>\$10,564,468</b>
Cost per year to incarcerate all drug-free school zone offenders (436)	<b>\$10,940,875</b>
Total years sentenced for first-time felony drug-free school zone offenses	<b>1,326</b>
Total cost to incarcerate first-time felony offenders incarcerated pursuant to drug-free school zone	<b>\$33,274,312</b>
Total years sentenced for non-violent drug-free school zone offenses	<b>4,672</b>
Total cost to incarcerate non-violent drug-free school zone offenses	<b>\$117,238,000</b>
Total years sentenced for drug-free school zone sentences	<b>4,832</b>
Total cost to incarcerate drug-free school zone sentences	<b>\$121,253,000</b>

Drug-Free School Zone Offenders  
No Prior Felony Offense

	First Name	Last Name	No Prior Felony Offense	Drug Sent	Race	Drug/Violent Conviction	Age at Offense
1	JEREMY	BAILEY	Y	8.0	WHITE		33
2	GARY	MARLOW	Y	3.0	BLACK		53
3	WESLEY	BOX	Y	15.0	WHITE		32
4	KENNETH	AMOS	Y	15.0	BLACK		21
5	JENICA	GANT	Y	15.0	BLACK		32
6	GREG	HARRIS	Y	24.0	BLACK		36
7	PETER	BATES	Y	24.0	BLACK		31
8	CHARLES	FAULKNER	Y	20.0	BLACK		29
9	FIDENCIO	PEREZ	Y	15.0	HISPANIC		36
10	TAURUS	DUNN	Y	6.0	BLACK		34
11	ANTONIO	HIGGINS	Y	10.0	BLACK		17
12	SAMMY	FINCH	Y	8.0	WHITE		40
13	ARTURO	JAIMES-GARCIA	Y	18.0	HISPANIC		44
14	MARVIN	GREEN	Y	15.0	BLACK		23
15	PRINCE	BARNETT	Y	8.0	BLACK	Y	25
16	SHANE	BURNS	Y	8.0	WHITE		24
17	PATRICK	CORRIGAN	Y	14.0	WHITE		31
18	ARTURO	CARDENAS	Y	15.0	HISPANIC		35
19	DAVID	STONE	Y	8.0	WHITE		30
20	CALVIN	BRYANT	Y	17.0	BLACK		22
21	JAMIE	WILLIS	Y	6.0	WHITE		35
22	QUINTON	MOSTELLA	Y	8.0	BLACK		22
23	JAKE	MONROE	Y	8.0	WHITE		18
24	XAVIER	BARHAM	Y	8.0	BLACK		18
25	JAMES	NICHOLS	Y	8.0	WHITE		28
26	KELLY	HEATH	Y	8.0	WHITE		24
27	MIGUEL	CERVANTES	Y	8.0	HISPANIC		27
28	INFALLIBLE	SAMUELS	Y	8.0	BLACK		31
29	RICKY	HANEY	Y	10.0	WHITE		37
30	BRETT	KNIGHT	Y	8.0	WHITE		31
31	BRODERICK	HOWARD	Y	8.0	BLACK		38
32	JOANA	BROOKS	Y	15.0	BLACK		31
33	ANDREA	DEAN	Y	8.0	BLACK		24

Drug-Free School Zone Offenders  
No Prior Felony Offense

	First Name	Last Name	No Prior Felony Offense	Drug Sent	Race	Drug/Violent Conviction	Age at Offense
34	STACEY	CARMICHAEL	Y	8.0	BLACK		20
35	DWIGHT	ROWE	Y	8.0	BLACK		23
36	THOMAS	AGNEW	Y	12.0	BLACK		26
37	RICARDO	DAVIDSON	Y	15.0	BLACK		44
38	STEVEN	HUGHES-MABRY	Y	15.0	BLACK		23
39	NAZARIO	ARAGUZ	Y	17.0	HISPANIC		31
40	ANTONIO	HARDY	Y	8.0	BLACK		19
41	ANTONIO	TURRENTINE	Y	3.0	BLACK		22
42	CLARENCE	MCCLAIN	Y	3.0	BLACK		49
43	TROY	BARTLEY	Y	8.0	WHITE	Y	42
44	MICHAEL	LEE	Y	8.0	WHITE		35
45	BRIAN	WELLS	Y	8.0	BLACK		44
46	RODGERICK	GRIFFIN	Y	10.0	BLACK		30
47	DAVID	MAXFIELD	Y	8.0	WHITE		29
48	D.JUAN	LEWIS	Y	8.0	BLACK		27
49	VALERIE	MCDANIEL	Y	12.0	BLACK		27
50	ZACHARY	BAKER	Y	9.0	WHITE		21
51	WENDOLYN	WALDEN	Y	8.0	WHITE		41
52	JOSEPH	KINDRED	Y	6.0	WHITE		28
53	MATTHEW	ADKISSON	Y	6.0	WHITE		18
54	ROBERT	JACKSON	Y	8.0	BLACK		51
55	JORDAN	PETERS	Y	15.0	WHITE		20
56	BRIAN	KEYS	Y	15.0	WHITE		31
57	WILLIAM	ELLIS	Y	8.0	WHITE		41
58	MALIK	YELDER	Y	12.0	BLACK		38
59	MICHAEL	GOODRUM	Y	15.0	BLACK		40
60	QUANYA	PREWITT	Y	4.0	BLACK		51
61	RICKY	SCOGGINS	Y	8.0	WHITE		52
62	MOTEZ	STRINGER	Y	6.0	BLACK		32
63	JORDAN	WHITE	Y	6.0	BLACK	Y	20
64	KEENAN	MCNEAL	Y	8.0	BLACK		35
65	JAMES	HUDSON	Y	12.0	BLACK		31
66	THOMAS	FLETCHER	Y	8.0	BLACK		21

Drug-Free School Zone Offenders  
No Prior Felony Offense

	First Name	Last Name	No Prior Felony Offense	Drug Sent	Race	Drug/Violent Conviction	Age at Offense
67	APRIL	GEIGER	Y	8.0	WHITE		32
68	DANNY	SANTRONE	Y	25.0	WHITE		51
69	JASON	COLEMAN	Y	6.0	BLACK		34
70	ANDRE	VIRGIL	Y	15.0	BLACK		39
71	GARRICK	GRAHAM	Y	25.0	BLACK		26
72	BASHAN	MURCHISON	Y	25.0	BLACK		36
73	HILLARY	HOLT	Y	3.0	WHITE		25
74	GREGORY	FREEMAN	Y	12.0	BLACK		32
75	HAILEY	HINES	Y	6.0	WHITE		20
76	SEAN	NANCE	Y	8.0	BLACK		22
77	GORDON	DAVIS	Y	12.0	BLACK		20
78	CARLOS	GONZALEZ	Y	15.0	HISPANIC		22
79	CAMERON	HILL	Y	6.0	BLACK		38
80	JONATHAN	ROSE	Y	3.0	WHITE		35
81	FELICIA	MITCHELL	Y	5.0	BLACK		38
82	JEREMY	HOLTSCLAW	Y	3.0	WHITE		32
83	PATIENCE	DAVIS	Y	3.0	WHITE		33
84	CHRISTOPHER	HALE	Y	12.0	BLACK		20
85	CHASITY	CAGLE	Y	3.0	WHITE		28
86	JALISA	ROSS	Y	3.0	BLACK		22
87	GERREN	NEFF	Y	3.0	WHITE		29
88	TORREZ	COLEY	Y	6.0	BLACK		25
89	DENNIS	GAYE	Y	8.0	BLACK	Y	20
90	JESSE	STEPHENS	Y	6.0	BLACK	Y	32
91	RANDALL	JORDAN	Y	8.0	WHITE		36
92	<b>SAMMY</b>	<b>RUSSELL</b>	<b>Y</b>	<b>8.0</b>	<b>WHITE</b>		<b>16</b>
93	FREDERICK	WILLIAMS	Y	12.0	BLACK		31
94	MAURICIO	PINA	Y	12.0	HISPANIC		36
95	JIM	ROBINSON	Y	8.0	BLACK		26
96	AYANNA	EDDINGS	Y	3.0	BLACK		28
97	JOHN	GREECH	Y	6.0	WHITE		48
98	JERMONTTEZ	SPARKMAN	Y	3.0	BLACK		19
99	DEVIN	JAMISON	Y	2.0	BLACK	Y	28

Drug-Free School Zone Offenders  
No Prior Felony Offense

	First Name	Last Name	No Prior Felony Offense	Drug Sent	Race	Drug/Violent Conviction	Age at Offense
100	MARY	HUGHES	Y	8.0	BLACK		48
101	TREVOR	SLIGH	Y	8.0	BLACK		42
102	MARCUS	WAKEFIELD	Y	8.0	BLACK		30
103	LINDA	FLEENOR	Y	3.0	WHITE		37
104	MONTRAY	JACKSON	Y	2.0	BLACK		28
105	TRAVIS	DILLARD	Y	8.0	WHITE	Y	47
106	JAMES	SULLIVAN	Y	2.0	WHITE		58
107	SHANNON	WIDENER	Y	3.0	WHITE		26
108	CHAZAMON	JONES	Y	3.0	BLACK		35
109	ALFRED	WILLIAMS	Y	20.0	BLACK		36
110	NORMA	WILSON	Y	3.0	WHITE		58
111	RONISHA	DULLY	Y	3.0	BLACK		22
112	TENEICE	ODEM	Y	3.0	BLACK		40
113	JACK	CHESNEY	Y	8.0	BLACK		34
114	JEFFERY	SHAFFER	Y	8.0	WHITE		51
115	LISA	FRANKLIN	Y	2.0	WHITE		51
116	ANTHONY	LINDSEY	Y	8.0	WHITE		31
117	BRIAN	CARY	Y	3.0	WHITE		31
118	QUESTON	JOHNSON	Y	3.0	BLACK		23
119	RAY	ELLIOTT	Y	2.0	WHITE		23
120	JEFFREY	MITCHELL	Y	25.0	BLACK		40
121	NEULAFIA	ODOMS	Y	6.0	BLACK		21
122	MICHAEL	KERBY	Y	8.0	WHITE		40
123	IRVIN	POSTON	Y	3.0	WHITE		67
124	KHARI	JONES	Y	9.0	BLACK		35
125	KEITH	GADIE	Y	8.0	BLACK		23
126	JAHEEL	EDWARDS	Y	8.0	BLACK		18
127	JOSEPH	MANCILL	Y	8.0	BLACK		40
128	JAMES	YOUNG	Y	8.0	WHITE		35
129	GEORGE	MCCOY	Y	8.0	WHITE		28
130	JUSTIN	LANE	Y	15.0	WHITE		30
131	VANESSA	PINEGAR	Y	9.0	BLACK		33
132	HARRY	WATTS	Y	3.0	BLACK		74

Drug-Free School Zone Offenders  
No Prior Felony Offense

	First Name	Last Name	No Prior Felony Offense	Drug Sent	Race	Drug/Violent Conviction	Age at Offense
133	ERIC	GALLAHER	Y	6.0	BLACK	Y	33
134	ERIC	POLLOCK	Y	15.0	BLACK		27
135	ROBERT	CLANTON	Y	23.5	WHITE		34
136	ANITA	PRATER	Y	3.0	BLACK		22
137	CHARLES	JOHNSON	Y	30.0	BLACK		38
138	KENNEETH	TABOR	Y	8.0	BLACK		30
139	RAYMOND	SMITH	Y	8.0	BLACK		22
140	SHAMSIDDEEN	HATCHER	Y	3.0	BLACK		29
141	CHRLES	JOHNSON	Y	2.0	WHITE		25
142	WILLIAM	CLARK	Y	1.0	BLACK	Y	21
143	WAYNE	POTEE	Y	15.0	WHITE		42
144	KAMEY	GRIFFIN	Y	1.0	WHITE		19
145	JAVOSEIA	GOOCH	Y	12.0	BLACK		19
146	JAMES	TAYLOR	Y	8.0	BLACK		22
			Total: 146	Average sentence: 9 years	White: 37% Black: 58% Hispanic: 5%	Total: 9	Average age: 32
				Longest sentence: 30 years			Youngest at time of offense: 16 years old
							Oldest at time of offense: 74 years old

# Exhibit 18



# STATELINE

## Why States are Taking a Fresh Look at Drug-Free Zones

September 15, 2016

By Teresa Wiltz



© The Associated Press

Drug-free zones are falling out of favor in some states that question their effectiveness, even as the opioid epidemic rages on. Above, a drug-free zone sign outside a school in Oklahoma.

In the late 1980s, every state and the District of Columbia had laws that imposed harsh penalties on drug offenses committed near schools.

The idea behind the “drug-free school zones” was to deter dealers at the height of a national crack cocaine epidemic from peddling drugs to children where they could be found most days.

Now those laws are undergoing new scrutiny, as states revisit long sentences for drug crimes that have led to mass incarceration and as they face a new drug epidemic, this time opioid addiction.

Some states, including Delaware, Indiana, Kentucky and Utah, are reducing the size of the drug-free zones as they seek to rid their prisons of so many nonviolent drug offenders with long sentences and as research indicates the zones sometimes fail to steer dealers away from schools.

But other states, such as Arkansas, Hawaii and Texas, are expanding the zones in response to the opioid crisis. They’re adding playgrounds, parks and other areas where children play and imposing heavy penalties for people caught with drugs there, sometimes even for small amounts.

The seemingly contradictory directions states are taking on drug-free zones points to the practical and political difficulties states are having. They’re trying to deter drug abuse, while also seeking to avoid packing prisons with people who receive extended sentences, often with no chance for parole, for being caught with drugs near schools.

## **Do School Zones Work?**

From the start, school zone laws have varied dramatically from state to state. Some are more stringent than others, sometimes to the point of being ineffective.

The laws are crafted to exact enhanced penalties for drug offenses within the zones. Some state laws establish distinct crimes with their own drug-free-zone penalties. They are added on top of the penalties for the original crime, in effect charging the offender twice for the same crime.

Arkansas, for example, has one of the nation’s most stringent laws, according to the Sentencing Project, a research and advocacy organization.

Drug-free zones there include not only schools, including colleges and universities as well as school bus stops, but also public parks and skating rinks, YMCAs and community centers, public housing and treatment centers, and day care centers and churches.

Offenders convicted of possession, delivery, manufacture and sale of drugs within a zone are sentenced to an additional 10 years in prison with no chance of parole.

In nine states, Alaska, Arkansas, Arizona, Connecticut, Indiana, Minnesota, New Mexico, Michigan and Oklahoma, simple possession in a school zone can get an offender more time.

In Alabama, drug-free school zones, which include colleges and housing projects, extend 15,460 feet, roughly three miles — much more than in other states.

In some states, drug-free zones cover nearly an entire city.

Take Connecticut, where the drug-free zone extends 1,500 feet from the perimeter of school property and includes day care centers and public housing.

A 2014 study by the Prison Policy Initiative, a nonpartisan research and advocacy group, found that 92 percent of the 148,000 or so residents of Bridgeport lived in a drug-free school zone. Meanwhile, in the small town of Bridgewater, just 8 percent of its 1,700 residents lived in a drug-free school zone.

“You’re increasing the penalties for crime for an entire city,” said Aleks Kajstura, the author of the study. “You’re no longer steering people away from these specially protected zones. There’s nowhere for them to go.”

Research in Massachusetts indicates that when the zones are so extensive they aren’t effective in moving drugs away from children and can have unintended consequences, such as targeting minorities in densely packed urban neighborhoods.

Drug dealers tend to do business close to home and often live within these zones, according to the study, co-authored by Massachusetts Democratic state Sen. Will Brownsberger, a former narcotics prosecutor.

For example, in Tennessee, a small-time dealer in a city can end up doing much more prison time than, say, a meth manufacturer in the country, just on the basis of geography.

“Did the presence of school zones move drug dealing away from the schools? The answer to that question is clearly no,” Brownsberger said. “It’s not a deterrent. If every place is a school zone, then no place is a school zone.”

## **Eight Years for a Sugar Packet**

The practical — and personal — effects the laws can have raise questions about their fairness.

For example, Rodgerick Griffin Jr. was standing on the porch of his ailing grandfather’s Chattanooga, Tennessee, house, in 2009, when the police rolled up. Relationships between residents and the police were none too friendly in this drug-infested neighborhood, so everyone on the street took off running. Griffin ran, too.

According to the police report, as Griffin ran, he threw down a baggie containing "a single, yellowish rock that appeared to be crack cocaine." Another bag was found, totaling 2.6 grams of the substance, or less than 1/8 of an ounce, about the weight of a sugar packet. Police arrested him, and he was charged with intent to sell cocaine and possession with intent to deliver cocaine, a Class B felony.

But because the then-31-year-old was arrested within 1,000 feet of an elementary school, or roughly three city blocks, he was charged with a Class A felony instead and faced an automatic sentence of 15 to 60 years with no opportunity for parole. Had he been arrested in another neighborhood, he would have faced eight years in prison and been eligible for parole in less than three.

Griffin, who had no previous arrest record, pleaded guilty and was sentenced to eight years. He's been in prison ever since, and must serve the full eight years.

"This has devastated us all. Emotionally, mentally, financially," said Griffin's aunt, Mary Patterson, a 57-year-old hospital administrative assistant. Griffin, she said, was the primary caretaker of the family's elder relatives.

Tennessee has one of the more restrictive drug-free zone laws in the country. It includes preschools, day care centers, public libraries, recreational centers and parks.

Drug offenders like Griffin are subject to mandatory minimum sentences, even if they are caught driving past a school zone, even if school is out for the summer and it's the middle of the night, said Nashville District Attorney General Glenn Funk. Most of his jurisdiction is a drug-free zone.

Funk ran for office in 2014 promising not to prosecute the school zone laws unless a child was endangered; he said that with mandatory sentencing, judges don't have the discretion to alter the sentences to fit the circumstances, such as awarding probation to a nonviolent, first-time offender.

This means that a first-time offender with as little as a half-gram of cocaine with intent to sell would be punished at the same felony level as someone charged with second degree murder, except the murder convict would eventually be eligible for parole, Funk said.

Someone caught with the same amount outside of the zone would face eight to 30 years and be eligible for probation, he said.

About 500 people in Tennessee are serving time for drug-free zone violations.

Tennessee's Senate minority leader, Lee Harris, a Democrat from Memphis, estimates that thousands more are just like Griffin: When faced with a stiff prison sentence, they plead guilty rather than take their chances with a jury.

In February, Harris introduced a bill that would have eliminated additional penalties for arrests outside of the school year. A similar bill failed to pass in the House. Harris said he plans to try again next legislative session.

"Our pie-in-the-sky idea is this crime should be just like any other crime and you should be eligible for parole," Harris said.

## **Fear of Political Name-Calling**

Attempts to deal with school zone laws are often met with political or law enforcement resistance and contradictions in state capitols, even as lawmakers debate how they can reduce the world's highest rate of incarceration by easing long prison sentences for nonviolent drug offenders who don't pose a threat to children.

The laws are even tougher to deal with when roughly 2.5 million Americans are addicted to opioids and more than 28,000 people died of overdoses of painkillers or heroin in 2014, the highest toll ever.

In addition to Tennessee, lawmakers in Connecticut and New Jersey this year considered scaling back drug-free zones. At the same time, New Hampshire and Washington state considered increasing penalties. None of the proposals were passed.

Even if drug-free zones don't make for good policy, "it's very hard to get legislators to make reforms in the criminal justice system when it comes to reducing sentences," said Michael Freeman, Hennepin County (Minnesota) Attorney and president-elect of the National District Attorneys Association.

"I can just see the campaign literature," he said. "Votes to reduce penalties in elementary schools." "Soft on drugs."

While some law enforcement officials, such as Nashville District Attorney Funk, say the laws should be scrapped, others, such as Terry Ashe of the Tennessee Sheriffs' Association, disagree.

The laws send a clear signal to drug dealers and should be kept, Ashe said.

"If you sell drugs in school zones, you're going to get an enhanced penalty," he said. "I'm not so sure that throwing out the baby with the bathwater is the right thing to do."

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# **Exhibit 19**

Davidson County Grand Jury  
Final Report

October Term 2014  
Judge Mark Fishburn  
Criminal Court Division VI

Presented December 19, 2014

WE, the members of the Grand Jury for Davidson County, Tennessee serving a term of October to December 2014 under the Honorable Mark Fishburn hereby submit the following report. Beginning the experience no one knew what to expect, but we hoped to be able to give back to the community by upholding our civic duty. The experience of being a member of the Grand Jury was rewarding, educational, challenging and a privilege. The opportunity provided a detailed insight into the operation of the criminal justice system. The time spent serving on the Grand Jury is an experience that will not be forgotten.

### CASES HEARD

During the term, the Grand Jury heard a total of 646 cases, returned a total of 645 true bills and 1 no true bill. The Grand Jury received two (2) applications to testify before the Grand Jury pursuant to Tenn. Code Ann. § 40-12-104. Both applications were reviewed and discussed by the Grand Jury. After thorough review, it was determined neither application warranted investigation by the Grand Jury. The applicants were informed of this decision by a letter from the District Attorney General's office.

### PRESENTATIONS

The Grand Jury received many informational and educational presentations at the beginning of the term. The presentations from the following experts allowed the jurors to have an increased understanding of the information presented to them by the witnesses.

District Attorney General Glenn Funk and General Michaela Matthews explained legal terminology, how indictments and presentments are made and other information to help the jury

better understand how cases reach the Grand Jury. The information served to clarify the jurors understanding of the judicial system.

Sgt. Michael Shreeve of the MNPD, CSA Unit and Sue Ross of Our Kids spoke with the jury about child sex crimes. The information presented by these individuals was saddening, but necessary. Sgt. Shreeve and Ms. Ross were able to eloquently discuss such a difficult topic. The information they provided was extremely helpful to our deliberations. The presenters were also able to prepare the jury about some of the evidence that may be presented to them for a case involving sexual abuse of a child.

Presentations were made by Metro Nashville Police Officers with the Drug Task Force, SPOPS Unit, Gang Unit (Sgt. Jon Boese), Domestic Violence Unit (Sgt. Carlos Anderson & Det. John Timm), DUI Unit (Officer Brad Nave), and Warrants Division (Captain Randall Hickerson). All of the presenters were extremely knowledgeable on the material and were able to convey that knowledge in an interesting manner. All are to be commended on helping the Grand Jury better accomplish their duty. Each presenter was very generous with their time and was willing to answer any questions that arose.

Chief of Police Steve Anderson spoke with the Grand Jury about the Metro Nashville Police Department including: challenges presented by Nashville's growth as a city, police officer body cameras and the Department's use of analytics to help ensure efficiency and reduce crime. Chief Anderson was an engaging speaker and it is clear the Metro Nashville Police Department has a strong, capable leader at its helm.

Mayor Karl Dean was generous enough with his busy schedule to visit and discuss the City of Nashville and his priorities. The Mayor spoke at length regarding education, transportation, economic development and public safety. He gave a great overview of the City and his

thoughts on the future of Nashville. The Mayor also spoke highly of Chief Anderson and the leadership team of the Metro Nashville Police Department.

### SITE VISITS

The Grand Jury took several trips during our term. First, we visited the Police Training Academy. A presentation was made explaining the escalation of force policy and how it is applied. The K-9 Unit provided a demonstration of the dogs at work. The handlers told us how the dogs trained and were used in the field. The aviation unit took jurors for a flight over downtown Nashville. On a subsequent visit, the Grand Jury participated in the Shoot, Don't Shoot simulation. The simulator gave jurors a unique insight about the challenges police officers face every day. The split second decisions officers must make in determining whether or not to discharge their sidearm was eye opening. Many members of the Grand Jury participated in police ride alongs. Riding along with an officer allowed jurors to interact with the police in their daily activities. Riding with the officer was an exciting time. Finally, the Grand Jury attended CompStat. At CompStat, the weekly statistics of all the precincts were discussed. The analytics gathered are used to determine what trends are occurring in Nashville and how to respond to these trends. The high level overview achieved at CompStat allows the Police Department to effectively fight crime in Nashville.

### COMMENTS / RECOMMENDATIONS

The Grand Jury noticed an increased emphasis on domestic violence cases presented during the term. Domestic violence presents a challenge to law enforcement and prosecution as the victims can have conflicting emotions about prosecution. The Grand Jury was pleased to see General Funk and his staff places an increased emphasis on prosecuting these crimes.

A consistent decision needs to be reached on when increased penalties are sought for drug-free school zone offenses. The decision to seek increased penalties resulting from school zone violations seemed to be arbitrarily reached at times. The law needs to be applied equally, not arbitrarily and capriciously.

The Grand Jury heard a case regarding sexual abuse of a minor. The allegations were made in April, but a forensic interview with the victim did not occur promptly. The Department of Children's Services is responsible for initiating the forensic interview with minors. However, for some reason this did not happen. Not conducting the forensic interview promptly does a disservice to the victim. The incident will no longer be fresh in the mind of the victim and important details may be lost. The Department of Children's Services should ensure forensic interviews are conducted in a timely manner when a minor alleges sexual abuse or rape.

When preparing witnesses to testify it would be useful to inform them they can use their notes and records. They are not expected to testify only from memory. While many witnesses were aware they could use their notes, some struggled through their presentation from memory alone. Witnesses should be prepared to thoroughly discuss the incident stemming in the charges being presented. Two common question witnesses were not always prepared to answer was the age of the defendant and the criminal history of the defendant.

It would be helpful if the docket sheet passed out to each member of the Grand Jury had the charges listed exactly as they are on the indictment. The differences between the docket sheet and indictment caused confusion at times.

### RECOGNITION

The Grand Jury would like to recognize several individuals whose time and effort were greatly appreciated.

Sergeant Robert Bandish was an excellent witness. He was always thoroughly prepared, extremely knowledgeable on police procedure and is a great ambassador for the Police Department. Further, Sgt. Bandish was able to keep the presentation of his cases fun and interesting. His humor and personality were greatly appreciated.

Lori Hooberry offered endless assistance. Ms. Hooberry handled many of the daily administrative activities involved with the Grand Jury, along with assisting presenters in operating the necessary video and computer equipment.

Holly Leach was extremely helpful in making sure alternate members of the Grand Jury would be present when regulars were not available. Ms. Leach also assisted the Grand Jury when other issues arose during the term.

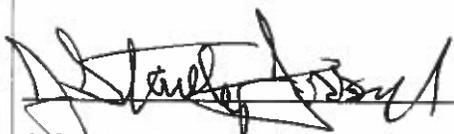
The Grand Jury would like to recognize and compliment General Glenn Funk and his staff. Additionally, the Grand Jury commends the effort and time the General Sessions Judges spent attempting to resolve misdemeanor charges. Resolving these misdemeanor charges prevents them from being bound over to the Grand Jury, which ensures the Grand Jury can give the necessary and appropriate time to the complex indictments.

Last, but certainly not least, the Grand Jury wants to recognize the Foreperson, Stan Fossick. Stan's tireless devotion in giving back to the community by serving as Foreperson is to be commended. Stan's generosity and kindness to provide doughnuts every day we met was appreciated by all. He also paid for the jury to have lunch at Monell's. It is clear to all who served on the Grand Jury Stan cares greatly about the City of Nashville. He generously donates his time and effort serving as the Grand Jury Foreperson. With his leadership, the proceedings were carried out in a smooth, efficient fashion. He let everyone actively participate and know their ser-

vice was appreciated. Stan Fossick's devotion to fulfilling his civic duty is relentless and honorable. We sincerely thank him for everything he does.

CLOSING

In closing, the members of the Grand Jury felt it was an honor and privilege to fulfill our civic duty. The experience of serving was extremely rewarding and interesting. Serving on the Grand Jury is a fantastic experience that we will remember for a lifetime. The Grand Jury serves an important role in the legal system. All members of the Grand Jury understood and embraced this role. If the opportunity presented itself in the future, members of the Grand Jury would gladly serve again.



J. Stanley Fossick



Rosejay Campbell

Charles Cathey

Charles Cathey

Molly Boyd

Molly Boyd

Joshua Eldridge

Joshua Eldridge

Karen Fairbend

Karen Fairbend

Tiamecca Irving

Tiamecca Irving

Mia Lewis

Mia Lewis

Judy Kelly

Judy Kelly

James Qualls

James Qualls

Damion Rooks

James Scott

Dianna Santana-Starnes

Dianna Santana-Starnes

Donald W. Wondolowski

Donald Wondolowski  
WONDOLOWSKI KY

Virginia Villalba

Virginia Villalba

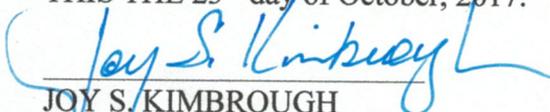
# Exhibit 20

**AFFIDAVIT OF ATTORNEY JOY KIMBROUGH**

Comes now Joy Kimbrough, former attorney for Calvin E. Bryant, Jr., and states as follows:

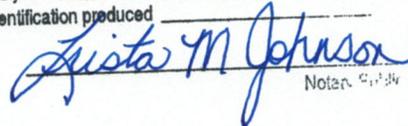
1. I represented Mr. Calvin Bryant, Jr. in two jury trials in case number 2008-B-1478. Mr. Bryant was found guilty, on several counts, at the second jury trial and is currently serving the sentence ordered by the Court.
2. Prior to trial I entered into plea negotiations with representatives from the Davidson County District Attorney's Office. To the best of my recollection, during the plea negotiations, the State extended the offer of allowing Mr. Bryant to plea guilty to the lesser charge of facilitation on each count. All counts would run concurrent for a total sentence of 8 years.
3. The facilitation offer was rejected because of the belief it was to be served at 100%.

SIGNED AND SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY  
THIS THE 23<sup>rd</sup> day of October, 2017.

  
JOY S. KIMBROUGH



State of TN  
County of Davidson  
Subscribed and sworn to (or affirmed) before me this  
23 day of October 2017  
By \_\_\_\_\_  
Personally known  OR produced identification \_\_\_\_\_  
Type identification produced \_\_\_\_\_

  
Notary Public

# Exhibit 21

Legal Advice (/free-legal-advice) > Criminal defense (/topics/criminal-defense)

LEGAL GUIDE

By Vincent Patrick Wyatt

Jan 11, 2012

## Drug Free School Zones Raise Stakes in Nashville, Tennessee

[Criminal defense \(/topics/criminal-defense/advice\)](#)

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If someone finds themselves charged with felony drug possession in Nashville, Tennessee, chances are before his or her case ever goes to a jury trial that he or she will face amended charges with the enhancing language relating to the drug free school zone.

Years ago, Tennessee enacted the Drug Free School Zone laws aimed at enhancing the punishment for those that sell drugs near minors. No one can challenge the intent of the law ; however, there is nothing that prevents the application of such laws against virtually any criminal defendant in a city such as Nashville. The enhanced penalties increase the sentencing range by one classication, which can basically double the sentencing range and increased the applicable fines. The penalties also require mandatory jail time when charges might have otherwise allowed for the sentence to be served on probation.

Prosecutors can add the enhanced penalties when there is proof that the defendant's criminal act was within 1000 feet of a public or private elementary school, middle school, high school; or public library, recreational center, park or child care. As one can imagine, in Nashville and other cities this 1000 feet boundary line can encompass almost an entire urban area. There is no requirement that the drug activity occur during school hours. Many cases stem from instances where individuals are simply driving down a major street. One might wonder if this was really the intent of the legislature, but regardless of that no one can question that the laws raise the stakes on almost every felony drug case in Nashville.

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**Vincent Patrick Wyatt**

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# Exhibit 22

# Doubts spread about drug-free school zone laws

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Questions about effectiveness prompt states to propose smaller zones

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AP Associated Press

updated 3/23/2006 12:33:36 AM ET

**NEW YORK** — In reaction to the crack epidemic of the 1980s, laws creating drug-free zones around schools spread nationwide. Now, hard questions are being raised — by legislators, activists, even law enforcement officials — about the fairness and effectiveness of those laws.

In New Jersey, Connecticut and Washington state, bills have been proposed to sharply reduce the size of the zones. A former assistant attorney general in Massachusetts reviewed hundreds of drug-free-zone cases, and found that less than 1 percent involved drug sales to youths.

Citing such developments, the Washington-based Justice Policy Institute is issuing a report Thursday that contends such laws, which generally carry extra-stiff mandatory penalties, have done little to safeguard young people and are enforced disproportionately on blacks and Hispanics.

“For two decades, policy-makers have mistakenly assumed that these statutes shield children from drug activity,” said report co-author Judith Greene, a New York-based researcher. “We found no evidence that drug-free zone laws protect children, but ample evidence that the laws hurt communities of color and contribute to mounting correctional costs.”

New Jersey’s sentencing review commission reached similar conclusions in December, when the panel — made up of state officials and criminal justice experts — found that students were involved in only 2 percent of the cases it examined. It said drug-free zones around schools, parks and housing projects cover virtually all of some cities, and 96 percent of offenders jailed for zone violations were black or Hispanic.

## Drug arrests up, not down

Instead of declining, drug arrests in the zones have risen steadily since the law took effect in 1987, the commission found.

A bill based on the panel’s recommendation has been introduced that would reduce the zones to 200 feet from the present size of 1,000 feet around schools and 500 feet around parks and public housing. Drug dealers in the smaller zones would face five to 10 years in prison, compared to three to five years under current law — but judges would have more discretion in sentencing.

“When the overlap of zones in densely populated areas covers the entire city, the idea of special protection loses its meaning — people don’t know they’re in a school zone,” said Ben Barlyn, a deputy attorney general and executive director of the sentencing review panel. “It would be as if we made the entire New Jersey Turnpike a reduced speed zone.”

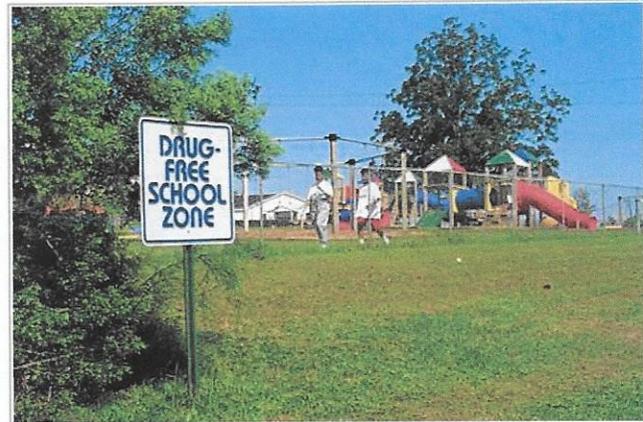
Barlyn said New Jersey prosecutors and police chiefs had no objection to shrinking the zones.

In Washington, state Sen. Adam Kline has proposed reducing drug-free school zones from 1,000 feet to 200 feet, and limiting the law’s application to regular school hours. In Connecticut, a hearing is scheduled Friday on a bill that would reduce school zones from 1,500 feet to 200 feet.

At recent meetings, activists with Connecticut’s A Better Way Foundation — which supports the bill — have displayed maps of major cities showing huge sections designated as drug-free zones. A map of New Haven indicated that Yale University’s golf course was the only large part of the city not encompassed in one of the overlapping zones.

Most states have drug-free-zone laws; they often entail mandatory prison terms that preclude such options as probation or treatment.

Lolita Buckner Inniss, a Cleveland State University law professor, is a vocal critic of the laws. Her research found that drug dealers in inner cities and compact rural towns were disproportionately likely to incur the extra penalties, in contrast to dealers in suburbs where zones covered relatively



Following the crack epidemic of the 1980s, laws created drug-free school zones, such as this one

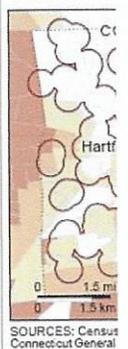
## Drug-zon

Some states, including Connecticut, have drug-free zone laws. Conn., shows often concentrated neighborhoods

— Drug-free public ho

Percentage of

- 0.0% - 10.0
- 10.1 - 25.0
- 25.1 - 60.0



small portions of the communities. That urban-suburban split has the effect of making minorities more likely to bear the brunt of tougher sentencing rules, she said.

"I've been dissatisfied by how the public mutely accepts these laws," she said.

### **Laws mostly affecting adults**

Though intended to deter drug sales to youths, the laws have been applied mostly to adult-to-adult transactions, according to the Justice Policy Institute, a private research group advocating alternatives to prison.

It cited a study by William Brownsberger, a former Massachusetts assistant attorney general who reviewed 443 drug cases in three cities. He found that 80 percent of the cases occurred in drug-free school zones, but only 1 percent involved sales to minors.

"The laws have an undeniable appeal — nobody wants drugs near schools," Brownsberger said in a telephone interview. "But the evidence suggests they're not effective in moving drug dealing away from schools. If every place is a stay-away zone, no place is a stay-away zone."

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4

# Exhibit 23

# Drug-Free Zone Laws: An Overview of State Policies

Drug-free zone laws are among the most longstanding sentencing policies in America's War on Drugs. In 1970 – 12 years before President Ronald Reagan officially used the term “War on Drugs” – Congress passed an early version of a law increasing penalties for certain drug offenses committed near schools. In the 1980s, many state governments began to do the same. Today, all 50 states and the District of Columbia have adopted some form of drug-free school zone law.

The premise behind drug-free zone laws was that drug trafficking near schools posed a danger to children. In order to protect children from drug activity, lawmakers established protected zones around the places where children were most likely to be present, including schools and public parks. Individuals caught using or selling drugs within the protected zone faced substantially higher penalties than others who engaged in the same conduct outside the zone.

The application of drug-free school zone laws has proved problematic for several reasons:

- First, in the sentencing schemes of several states defendants may face two distinct penalties for a single offense.
- Second, the laws are frequently drafted so broadly that they result in enhanced penalties for drug offenses that are a substantial distance from a school, that do not involve school children in the offense, or take place outside of school hours. In Alabama, for example, a drug sale that takes place as much as three miles from a school, college, or public housing project is subject to a mandatory five-year prison term.
- Third, because protected areas are clustered within urban, high-density population areas, the zones disproportionately affect people of color and economically disadvantaged citizens.<sup>1</sup>

In recent years, these problems have led at least seven states, including Connecticut, Delaware, Indiana, Kentucky, Massachusetts, New Jersey, and South Carolina, to reform their drug-free zone laws. This briefing paper provides an overview of these statutes nationally and an assessment of reform activity in recent years.

## DRUG-FREE ZONES: DIVERSITY AMONG THE STATES

Drug-free school zone laws vary by jurisdiction, with the key distinctions being in these areas: zone size, locations covered, offenses covered, and penalties imposed (see Appendix for full description of each state's policies). Some states have also adopted restrictions on when and under what circumstances the enhanced penalties apply.

All 50 states and Washington, D.C. (see Appendix) apply some form of enhanced penalties to offenses involving manufacture, sale, distribution, or possession with intent to distribute drugs. In nine states—Alaska, Arkansas, Arizona, Connecticut, Indiana, Minnesota, New Mexico, Michigan and Oklahoma—defendants in drug-free zones can also face enhanced penalties even for simple drug possession that does not involve sale to school children. In Arkansas, for example, simple possession of two grams of methamphetamine is sufficient to

**Table 1. Drug-Free Zone Sizes by State**

< 1,000 ft.	1,000 ft.			> 1,000 ft.
Alaska	Alabama	Maine	Ohio	Alabama
Arizona <sup>a</sup>	Arkansas	Maryland	Oklahoma	Connecticut
Delaware	California	Michigan	Oregon	Louisiana
Hawaii	Colorado	Mississippi	Pennsylvania	Mississippi
Indiana	Connecticut	Missouri	South Carolina	Missouri
Massachusetts	Florida	Nebraska	South Dakota	Oklahoma
Minnesota	Georgia	Nevada	Tennessee	South Carolina
Rhode Island	Idaho	New Hampshire	Texas	
Vermont	Illinois	New Jersey	Utah	
Wyoming	Iowa	New Mexico	Virginia	
	Kansas	New York	Washington	
	Kentucky	North Carolina	Washington, D.C.	
	Louisiana	North Dakota	West Virginia	

<sup>a</sup>Arizona’s drug-free zones apply 300 feet from school property on private property and 1,000 feet from school property on public property.

trigger a ten-year sentence with no parole in addition to the sentence imposed for the underlying offense.

As seen in Table 1, 32 states and the District of Columbia establish a zone area that extends 1,000 feet in all directions from the property line of schools and other protected areas. Thus, in most states a drug sale that takes place at a distance of more than three football fields away from a school building can result in enhanced prison time. Ten states have drawn zones more tightly so as to avoid overreaching in their impact, while seven others have cast a much wider net of 1,500 feet or more.

Though the stated intent of drug-free zone laws was to protect schools, 31 states have extended the scope of their policies to areas beyond elementary and secondary schools and onboard school buses. For example, several states have enacted zones around public housing facilities, public parks, churches, and daycare centers. Others, including Missouri and West Virginia, include colleges and universities in their definition of “school.” Utah adds shopping malls, amusement parks, and the parking lots of such areas to the list of covered areas.

**31 states** have extended the scope of their policies to areas beyond elementary and secondary schools.

The most expansive law in terms of covered locations is that of Arkansas, which draws zones around schools, public parks, public housing facilities, day care centers, colleges and universities, recreation centers, skating rinks, Boys’ and Girls’ Clubs, substance abuse treatment facilities, and churches.

## PENALTIES

Drug-free zone laws apply enhanced penalties in two different ways among the states. In thirty states, the law designates drug offenses within the protected zone as distinct crimes with their own penalties or penalty ranges. In Colorado, for example, sale of a controlled substance within a drug-free zone is a distinct criminal offense that carries an eight-year mandatory minimum sentence. In other states, the law prescribes enhanced penalties for underlying crimes when they occur within the protected zone. In Arizona, for instance, committing a covered offense within a drug-free zone increases the presumptive minimum and maximum penalties for the underlying offense by one year.

States also vary in the severity of the penalties drug offenders receive for violating drug-free school zone laws. In 13 states, violation of the law triggers a mandatory minimum sentence or sentence enhancement that ranges from one year in Virginia to eight years in Colorado. In Washington, DC, Rhode Island, and the state of Washington, the drug-free

zone violation doubles the maximum penalty for the underlying offense.

Kansas, Nebraska, and Tennessee elevate the felony class of the underlying drug offense when it is committed within a drug-free zone, thereby exposing the defendant to harsher penalties. Similarly, Delaware and Nevada treat violation of the drug-free zone as an aggravating factor in the sentencing proceeding for the underlying drug offense. Finally, some states allow juvenile defendants to be prosecuted for a drug-free zone offense in adult court and to be sentenced to an adult institution for violations of drug-free zone laws.

## LIMITATIONS ON DRUG-FREE ZONES

A number of states have imposed various restrictions on their drug-free zone laws with the intention of narrowing their focus to more closely align with the original purpose of the law. Lawmakers have limited the application of the zone laws based on the nature of the transaction, the age of the defendant, the time of day, the presence of children, and whether the offense takes place on public or private property.

Seven states—Alaska, Georgia, Louisiana, Montana, New Jersey, Texas, and Washington—apply an exception to their drug-free zone laws if the offense occurs within a private residence so long as no children are present and the defendant did not profit from the offense. Virginia similarly applies its law only on public property. California, Nebraska, and West Virginia exempt juvenile defendants from enhanced penalties, as does New Mexico for possession offenses. Florida, Massachusetts, and Nevada impose some form of time restrictions on their laws so that they only apply when children are present.

New York and South Carolina require that defendants know they are in the zone when they commit the offense, while North Carolina and North Dakota exempt small quantities of marijuana from their zone laws. Indiana is unique in that it creates affirmative defenses to its zone law: defendants may avoid the enhanced penalties of the law if they were only briefly

in the zone while no minors were present or if they were in the zone solely because law enforcement officers stopped them there

## DRUG-FREE ZONE LAWS: REFORMS

While courts have been reluctant to grant Constitutional challenges to drug-free zone laws, concerns over the laws have led a number of state legislatures to reform their drug-free zone policies. By 2005, lawmakers in Massachusetts, New Jersey, and Connecticut had commissioned studies to survey the impact and effectiveness of drug-free zone laws in their respective states, and identified problems regarding the scope of their respective zones and resulting racial disparities.<sup>2</sup> Several states have since enacted policy reforms including Massachusetts, New Jersey, Connecticut, and Indiana. Delaware, Kentucky and South Carolina also reformed their drug-free zone laws as part of larger drug law reform bills. But other states, including Arkansas, Hawaii, and Texas, have adopted harsher penalties by expanding locations to include public housing and playgrounds where selling drugs can trigger enhanced penalties.<sup>3</sup>

### CONNECTICUT

Connecticut's harsh drug-free zone law was enacted in 1987. In 2001, Connecticut legislators changed state law to grant judges discretion in applying the school zone penalty in certain drug offenses based on "good cause."<sup>4</sup> Yet the Connecticut statute imposing a three-year mandatory minimum sentence for committing a drug offense within 1,500 feet of a school, public housing complex, or daycare center remains in effect.

However, further reforms may soon be enacted. In the 2013 legislative session, Connecticut's Black and Puerto Rican Caucus sponsored a bill that would have reduced the size of the state's drug-free zones from 1,500 feet to 300 feet. The bill was debated in the Connecticut House of Representatives but Republican opponents succeeded in filibustering the bill and its time expired without a vote. As a result, the bill stalled and will not become law for 2013.

Nevertheless proponents of the bill have vowed to introduce it again in the next legislative session.

## DELAWARE

Delaware's drug-free zone law was first adopted in 1989 and created 1,000-foot zones around schools and 300-foot zones around parks. Commission of a drug offense—including simple possession—within the zone constituted a distinct felony offense. In 2011, as part of a general effort to reduce excessive penalties for drug users and lower level sellers, the General Assembly passed and Governor Jack Markell signed a bill that substantially reformed the state's drug laws.

The 2011 law shrunk Delaware's drug-free zones from 1,000 feet to 300 feet. It also created three categories of drug offenses—simple possession, aggravated possession, and drug dealing—with the sentence for each offense depending on the type and quantity of drug involved and the presence or absence of aggravating circumstances. The law makes commission of the underlying offense within a drug-free zone an aggravating factor for the purposes of sentencing.

## INDIANA

Indiana's original drug-free zone law, passed in 1987, raised the felony class of the underlying drug offense from Class B to Class A if the offense occurred within 1,000 feet of school property, a public park, a public housing complex, or a youth program center. Under state law, the penalties imposed for committing a Class A felony are substantially harsher than those imposed for a Class B felony: a Class A felony exposes a defendant to a sentence of 20 to 50 years in prison with an advisory sentence of 30 years, while a Class B felony exposes a defendant to a sentence of 6 to 20 years in prison with an advisory sentence of 10 years. In 2007, two bills were introduced—one in each house of the legislature—that would have expanded drug-free zones to churches and marked bus stops, respectively.

In response to the 2007 bills, Kelsey Kauffman, formerly of DePauw University, and her students began studying the impact and effectiveness of the state law. Their findings were similar to those in Massachusetts and Connecticut: drug-free zones blanketed large portions of inner city areas in Indianapolis and more than 75% of defendants who had their felony class raised under the drug-free zone statute were black.<sup>5</sup> Professor Kauffman and her students presented their findings before the Indiana Senate Committee on Corrections, Criminal, and Civil Matters in 2007 and 2008 and again before the specially-convened Indiana Sentencing Policy Study Committee in October 2008. Their testimony contributed to the defeat of the bills in the legislature.

In a drug-free zone case in February 2012, the Indiana Supreme Court reduced the 20-year sentence of a Kokomo man convicted of possessing small amounts of marijuana and cocaine within a drug-free zone.<sup>6</sup> Because the man would have faced a maximum prison sentence of only 18 months if his offense had occurred outside the zone, the court found that the 20-year sentence was grossly disproportionate to the severity of the crime. Furthermore, the court signaled that it would continue to reduce harsh sentences imposed under the drug-free zone law when it reduced a similar sentence in June 2012.<sup>7</sup>

In response, to address the concerns of the Indiana Supreme Court as well as the issues documented in the DePauw University study, the legislature passed and Governor Mike Pence signed a bill that substantially reformed the state's law. The bill reduced Indiana's zones from 1,000 feet to 500 feet and eliminated the zones around public housing complexes and youth program centers. It also added the requirement that a minor must be reasonably expected to be present when the underlying drug offense occurs. Lastly, the measure made violation of the drug-free zone law an "enhancing circumstance" of the underlying drug offense, the severity of which is dependent upon the type and quantity of the drug involved. Because the law also restructures Indiana's felony classification structure and penalties, a defendant sentenced under the revised law now faces a mandatory minimum penalty of one year rather than twenty years.

## KENTUCKY

Lawmakers modified the state's drug free zone in 2011. The provision was included in a larger package of sentencing reforms that were adopted to address the state's growing prison population. State lawmakers shrunk the drug free zone from 1,000 yards to 1,000 feet. Anecdotal reports suggest that the original zone was a mistake given that most states impose a zone measured in feet rather than yards. The change in policy was adopted without opposition

## MASSACHUSETTS

In 1989, the General Assembly of Massachusetts passed the state's first drug-free zone law, which imposed a 2-15-year mandatory minimum sentence for convictions of selling or distributing drugs within 1,000 feet of a school. A 1993 amendment drew a 100-foot zone around parks, and a 1998 amendment added a 1,000-foot zone around day care and Head Start facilities.<sup>8</sup> Efforts to reform the law began in 2000, when Dorchester District Court Judge Sydney Hanlon noticed that a majority of drug-free zone defendants in her courtroom were black or Hispanic and requested that Northeastern University researchers conduct an analysis on the racial impact of the law. The researchers documented that 80% of the defendants who received enhanced sentences under the drug-free zone law were black or Hispanic—even though 45% of those arrested for drug violations statewide were white.

The next layer of drug-free zone research was conducted by William Brownsberger at the Boston University School of Public Health. In his analysis of 443 drug sale cases in Fall River, New Bedford, and Springfield, Massachusetts, Brownsberger found that school zones covered 29% of the three studied cities and 56% of high-poverty areas.<sup>9</sup> These findings led Brownsberger to recommend that the Massachusetts zone be shrunk from 1,000 feet to 100-250 feet.

These findings were bolstered by a 2009 report issued by the Prison Policy Initiative (PPI). PPI's research, which focused on Hampden County in western Massachusetts, revealed that residents of

urban areas were five times as likely to live within a drug-free zone as residents of rural areas.<sup>10</sup> The data further showed that more than half of black and Hispanic residents lived in drug-free zones while less than a third of white residents did so. PPI also found that the addition of Head Start facilities to the law in 1998 disproportionately impacted poor neighborhoods since such facilities service poor neighborhoods and are therefore more likely to be located there.

As a result of the issues surrounding the state's drug-free school zone law, legislators serving on Massachusetts's joint Judiciary Committee approved a bill that would have shrunk the size of the zones and limited the hours of their effectiveness, but it died on the floor of the General Assembly. In the summer of 2012, however, with the endorsement of Governor Deval Patrick, the General Assembly passed a bill that reduced the size of Massachusetts's zones from 1,000 feet to 300 feet and limited the hours of the zones' operation from 5 a.m.- midnight.

## NEW JERSEY

New Jersey first enacted its drug-free zone law as part of sweeping drug legislation in 1987. The original law drew a 1,000-foot zone around schools; distributing, dispensing, or possessing with intent to distribute drugs within that zone was classified as a third-degree felony with a three-year mandatory minimum prison sentence. In 1998, New Jersey lawmakers added a 500-foot zone for drug sales around public housing complexes, parks, libraries, and museums. Violation of the 1998 law constituted a second-degree offense, for which a prison term is the presumptive sentence. Furthermore, New Jersey courts have interpreted the word "school" in the statute to be broad, including daycare centers, vocational training centers, and other educational facilities.

Advocacy organizations including the Drug Policy Alliance and Families Against Mandatory Minimums prioritized reform of the state's drug-free school zone laws. This was instrumental in the legislature's decision to convene the New Jersey Commission to Review Criminal Sentencing in 2004. The Commission found that that enforcement of the drug-

free-zone laws had a devastating impact on minority defendants because New Jersey's densely populated urban areas were transformed into massive "drug-free" zones. Nearly every defendant (96%) convicted and incarcerated for a drug-free zone offense in New Jersey was either black or Latino.<sup>11</sup> The Commission recommended that the legislature shrink the size of the zones from 1,000 to 200 feet and eliminate the mandatory minimum sentence for school zone violations.

The commission's bill passed in committee in 2005 but stalled in the legislature later that year. Five years later, Governor Jon Corzine signed into law a bill that did not alter the 1,000-foot zone size, but eliminated the mandatory minimum prison sentence for school zone offenses and enhanced judicial discretion in such cases.

## SOUTH CAROLINA

South Carolina maintains an expansive zone of more than 2,600 feet, or a half mile, around restricted areas. However, lawmakers modified the triggers for penalty enhancements in restricted areas when a

comprehensive package of sentencing reforms that garnered bipartisan support was adopted in 2010. The modification requires that anyone arrested for a drug offense in an enhancement zone must have knowledge that he or she was in a restricted area with the intent of selling.

## CONCLUSION

Drug-free zone laws were initially promoted as an attempt to keep dangerous drug activity away from children. In practice, drug-free zone laws have created a number of serious issues within the criminal justice system, by frequently imposing excessive penalties and by subjecting urban poor and minority populations to harsher penalties than others for similar drug offenses. Spurred by more than a decade of research, a number of states are taking measures to reform their drug-free zone laws to alleviate the burdens they impose on poor people and people of color with no benefit to public safety. These states should serve as a model for other jurisdictions as the movement for fairer, more effective drug laws continues to build momentum in the United States.

## ENDNOTES

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**Appendix. Drug-Free School Zone Laws by State**

State	Statute	Zone Size	Covered Locations	Covered Offenses	Penalties	Limitations
Alabama	Code of Ala. § 13A-12-250	15,460 ft.	Schools (includes colleges), public housing projects	Sale	5-year mand min, no parole	N/A
Alaska	AK Stat. § 11.71.040-41	500 ft.	Schools, school buses, youth and recreation centers	Possession w/ recklessness (either 3rd or 4th degree felony)	Class C or Class B felony	Private residence + personal
Arizona	A.R.S. § 13-3411	300 ft. (private property); 1,000 ft. (public property)	Schools	Sale, possession, manufacture	Increases presumptive min and max by 1 year	N/A
Arkansas	A.C.A. § 5-64-411	1,000 ft.	Public parks, schools (includes colleges and universities), school bus stops, skating rinks, YMCAs, community centers, public housing complexes, substance abuse treatment facilities, day care centers, churches	Possession, delivery, manufacture, sale	10-year additional sentence (concurrent or consecutive), no parole	N/A
California	Ann. Cal. Health & Safety Code § 11353.6	1,000 ft.	Schools	Possession w/ intent, delivery, sale, manufacture	3-5 years discretionary	Defendant > 18 years old; school hours only; only applies to places children expected to be
Colorado	C.R.S.A § 18-1.3-407	1,000 ft.	Schools, school buses	Possession w/ intent, delivery, sale, manufacture	8-year mandatory min	N/A
Connecticut	C.G.S.A. § 21a-278a	1,500 ft.	Schools, public housing complexes, day care centers	Possession w/ intent, delivery, sale, manufacture	3-year mand min additional (consec)	N/A
Delaware	16 Del.C. § 4701	300 ft.	Schools, parks, churches, rec. areas	Possession w/ intent, delivery, sale, manufacture	Aggravating Factor (Min. Class D Felony)	N/A
District of Columbia	DC ST § 48-904.07a	1,000 ft.	Schools (including universities), day care centers, public swimming pools, playgrounds, arcades, youth centers, public housing complexes	Distribution, possession w/ intent to distribute	Up to 2x fine Up to 2x maximum sentence	N/A
Florida	F.S.A. § 893.13	1,000 ft.	Schools (including universities), day care centers, churches, public housing complexes, parks	Possession w/ intent, delivery, sale, manufacture	3-year man min	Effective only 6am-midnight (schools only)
Georgia	Ga. Code Ann. § 16-13-32.4	1,000 ft.	Schools, parks, playgrounds, recreation centers, public housing complexes	Possession w/ intent, delivery, sale, manufacture	Up to 20 years + \$20,000 fine (consecutive)	Private residence + personal + no child < 17 present
Hawaii	HRS § 712-1249.6	750 ft.	Schools, school buses, parks, public housing complexes	Possession w/ intent, delivery, sale	Class C or Class D felony	N/A

State	Statute	Zone Size	Covered Locations	Covered Offenses	Penalties	Limitations
Idaho	I.C. § 37-2739B	1,000 ft.	Schools	Possession w/ intent, delivery, sale, manufacture	5-year mand min to life	N/A
Illinois	720 ILCS 570/407	1,000 ft.	Schools, school buses, public housing complexes, public parks, churches, nursing homes	Possession w/ intent, delivery, sale, manufacture	Class X Felony	N/A
Indiana	IC 35-48-4-16	500 ft.	Schools, parks	Possession, delivery	Level 4 Felony	Defenses: 1) Briefly in zone while minor was present; 2) No minor present; 3) Law officer requested or stopped in zone
Iowa	I.C.A. § 124.401A	1,000 ft.	Schools	Possession w/ intent, delivery, sale, manufacture	Up to 5 year enhancement	Defendant > 18 years old
Kansas	K.S.A. 21-5705	1,000 ft.	Schools	Possession w/ intent, sale	+1 Felony Level	N/A
Kentucky	KRS § 218A.1411	1,000 ft.	Schools	Trafficking	Class D Felony	N/A
Louisiana	LSA-R.S. 40:981.3	2,000 ft.	Schools (including universities), drug treatment facilities, religious facilities, public housing complexes, day care centers	Possession w/ intent, sale	Maximum fine + up to 1.5 times maximum sentence	Private residence + no child < 18 present
Maine	17-A M.R.S.A § 1105-A	1,000 ft.	Schools, school buses	Trafficking	Varies based on drug	N/A
Maryland	M.D. Code, Criminal Law, § 5-627	1,000 ft.	Schools, school buses	Possession w/ intent, delivery, sale, manufacture	Up to 20 years (1st offense); 5-year mand min (2nd+)	N/A
Massachusetts	M.G.L.A. 94C § 32J	300 ft.	Schools, preschools; parks (100 ft.)	Possession w/ intent, delivery, sale, manufacture	2-15 years	5am-midnight only
Michigan	M.C.L.A. 333.7410	1,000 ft.	Schools, libraries	Possession w/ intent, delivery, sale, manufacture	2-year minimum (judge may modify)	N/A
Minnesota	M.S.A. § 152.01	300 ft.	Schools, parks, public housing complexes	Possession, delivery, manufacture, sale	Sentence degree enhancement	N/A
Mississippi	Miss. Code Ann. §41-29-142	1,500 ft. from building; 1,000 ft. from property line	Schools, churches, public parks, ballparks, public gyms, youth centers, movie theaters	Possession w/ intent, delivery, sale, manufacture	3 year mand min to life	N/A
Missouri	V.A.M.S. 195.214	2,000 ft.	Schools (including universities), school buses	Distribution, sale	Class A Felony	N/A
Montana	MCA 45-9-109	1,000 ft.	Schools	Distribution, sale	3 year mand min to life	Private residence + no child < 18 present

State	Statute	Zone Size	Covered Locations	Covered Offenses	Penalties	Limitations
Nebraska	Neb.Rev.St. § 28.416	1,000 ft.	Schools, playgrounds, colleges (1,000 ft.); youth centers, video arcades, public pools (100 ft.)	Possession w/ intent, delivery, sale, manufacture	+1 Felony Level	Defendant > 18 years old
Nevada	N.R.S. 453.3345	1,000 ft.	Schools, campuses, school bus stops playgrounds, parks, pools, video centers, arcades	Manufacture, delivery, sale	Aggravating Factor	Within 1 hour of school hours (school bus stop only)
New Hampshire	N.H. Rev. Stat. §193-B:1	1,000 ft.	Schools, school buses	Possession w/ intent, delivery, sale, manufacture	1 year mand min + 2x maximum penalty for underlying offense	N/A
New Jersey	N.J.S.A. 2C:35-7	1,000 ft.	Schools, school buses	Possession w/ intent, delivery, sale	3 year mand min, no parole	Judge may adjust parole ineligibility based on mitigating factors; private residence + no child < 18 present + not for profit
New Mexico	N. M. S. A. 1978, § 30-31-2(Y)	1,000 ft.	Schools	Possession, delivery, manufacture, sale	First-class Felony	Possession limited to defendants > 18 years old
New York	McKinney's Penal Law § 220.44	1,000 ft.	Schools, day care centers	Trafficking	Class B Felony	Limited to areas "accessible" to public; some drugs require knowledge of zone
North Carolina	N.C.G.S.A. § 90-95	1,000 ft.	Schools, child care centers, parks	Possession w/ intent, delivery, sale, manufacture	Class E Felony	< 5 g marijuana excepted
North Dakota	NDCC, 19-03.1-23(3)(a)	1,000 ft.	Schools	Possession w/ intent, delivery, sale, manufacture	8-year sentence; If defendant > 21, 8-year mand min	Marijuana excepted
Ohio	R.C. § 2925.01(P)	1,000 ft.	Schools	Sale	Min. 4th Degree Felony	N/A
Oklahoma	63 Okl. St. Ann. § 2-401(F)	2,000 ft.	Schools (including universities), parks, public housing complexes, child care centers	Possession w/ intent, delivery, sale	2x max sentence	N/A
Oregon	O.R.S. § 475.904	1,000 ft.	Schools	Delivery, manufacture	Class A Felony	N/A
Pennsylvania	18 Pa.C.S.A. § 6317	1,000 ft.	Schools, parks, playgrounds; school buses (250 ft)	Possession w/ intent, delivery, sale	2-year mand min	N/A
Rhode Island	Gen.Laws 1956, § 21-28-4.07.1	900 ft.	Schools, parks, playgrounds	Distribution, manufacture	2x max sentence 2x max fine	N/A

State	Statute	Zone Size	Covered Locations	Covered Offenses	Penalties	Limitations
South Carolina	Code 1976 § 44-53-445	2,640 ft.	Schools (including universities), parks, playgrounds	Possession w/ intent, delivery, sale, manufacture	Up to 10-year sentence	Defendant must know of zone; police cannot stop within zone
South Dakota	SDCL § 22-42-19	1,000 ft.	Schools, youth centers, public swimming pools; video arcades (500 ft.)	Possession, delivery, manufacture, sale	Class 4 Felony = 5 year mand min	Judge may adjust sentence
Tennessee	T. C. A. § 39-17-432	1,000 ft.	Schools, child care centers, libraries, rec. centers, parks	Possession w/ intent, delivery, sale, manufacture	+1 Felony Level	N/A
Texas	V.T.C.A., Health & Safety Code § 481.134	1,000 ft.	Schools (including universities), playgrounds, video arcades, youth centers,; public swimming pools (300 ft.)	Possession, delivery, manufacture, sale	+5 year max sentence	Possession excepted if inside private residence + no child < 18 present
Utah	U.C.A. 1953 § 58-37-8(4)	1,000 ft.	Schools (including universities), child care centers, parks, arcades, rec. centers, amusement parks, churches, shopping malls, sports facilities, movie theaters, playhouses, parking lots, libraries	Possession w/ intent, delivery, sale, manufacture	First Degree Felony	N/A
Vermont	18 V.S.A. § 4237	500 ft.	Schools, school buses	Distribution, sale	Up to 10-year sentence	N/A
Virginia	18 V.S.A. § 4237	1,000 ft.	Schools, school buses, school bus stops, day care centers, mental health facilities	Possession w/ intent, delivery, sale, manufacture	1-5 years mand min	Public property only; school bus stop limited to when children are present
Washington	West's RCWA 69.50.435	1,000 ft.	Schools, school buses, school bus stops	Possession w/ intent, delivery, sale, manufacture	2x max sentence	Private residence + no child < 18 present + not for profit
West Virginia	W. Va. Code, § 60A-4-406	1,000 ft.	Schools (including universities)	Distribution, sale	No probation for 3 years	Defendant > 18 years old
Wyoming	W.S.1977 § 35-7-1036	500 ft.	Schools, school buses	Possession w/ intent, delivery, sale, manufacture	2-year mand min	Penalties less for minors and for possession

# Exhibit 24

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WEDNESDAY, AUGUST 31, 2016

## 80 Percent of Tennesseans Want Drug-Free School Zone Law Reform

POSTED BY JOSHUA CANNON ON WED, AUG 31, 2016 AT 12:56 PM

[click to enlarge](#)

A bi-partisan majority of Tennessee residents support reforming the state's drug-free school zone law — one that's been criticized as being out of line with the legislation's intent.

"Although drug-free school zones may sound good on the surface, they seem to create some troubling inequities," said Senate Minority Leader Lee Harris. "As a consequence, today many states are in the process of making modifications to their drug-free school zone laws. It's time for Tennessee lawmakers to join them, and as this poll shows, Tennesseans are ready for change."

icitizen, in collaboration with Sen. Harris, conducted the poll. The organization surveyed 531 registered Tennessee voters and found that more than eight in 10 Tennesseans support a reform to The Tennessee Drug-Free School Zone Act, which was enacted in 1995. The law enhances penalties for drug crimes that occur within 1,000 feet of a school, daycare, library, recreational center, or park.

**"It's refreshing to see D's and R's come together in the name of criminal justice reform ... this law disproportionately affects urban areas such as Memphis, Nashville, Knoxville, and Chattanooga." — Senate Minority Leader Lee Harris**

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A defendant in a school zone currently faces 15 years in prison for a first-time, nonviolent offense before the possibility of being released. If the offense took place outside of a school zone, the same defendant would be eligible for release after 29 months. The law applies even when the offense occurs outside of school hours, when school is closed during summer, and regardless if children are present.

About 84 percent of those polled support major or minor reforms to the law. Tennessee residents — 62 percent — say policy that clarifies the law's intent should enhance penalties when children are present. Support for reform garnered interest from both parties, with 90 percent of Democrats and 80 percent of Republicans supporting a reform to the law.

"It's refreshing to see D's and R's come together in the name of criminal justice reform," Sen. Harris said. "I believe that they recognize, like I do, that this law disproportionately affects urban areas such as Memphis, Nashville, Knoxville, and Chattanooga. In these urban areas, due to their density and the sheer number of schools, most places are a drug-free school zone."

Nashville's District Attorney Glenn Funk has previously said in op-eds published in the *Commercial Appeal* and *Chattanooga Times Free Press* that the law is applied inconsistently with the legislation's intent.

"[The intent] was to keep drugs away from schoolchildren," Funk wrote. "This enhancement puts street level drug-free school zone act violations on par with second degree murder. The idea that this law keeps school kids safe is a myth, all it accomplishes is the destruction of communities."

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# Exhibit 25

# TENNESSEE'S DRUG-FREE ZONE LAW: DEFECTIVE BY DESIGN?

BY DEVON C. MUSE

Children and illicit drug activity do not mix and as a society we recognize this. In fact, every state in the U.S. has adopted drug-free zone legislation reflecting this notion. Drug-free zone laws (“DFZLs”) aim to ensure the safety and well being of our children and their surrounding communities by discouraging drug activity near locations children frequent, such as schools or parks. A noble goal indeed. But what if the law is failing? Or even worse, what if the law is doing more harm than good? Recent congressionally led and institutionally driven research makes this concern all-too-real, bringing to the forefront an important question: What should Tennessee do in light of these findings?

Tennessee’s DFZL (TENN. CODE ANN. § 39-17-432) aims to deter drug activity away from youth by requiring enhanced and mandatory minimum sentences for criminal drug-law violations within one thousand feet of any school, child care agency, public library, recreational center, or park. On its face, such a law seems perfectly reasonable and suitable for providing special protection to our youth. But in this generalized assumption lays a problem.

Statistical research demonstrates that when the “buffer zones” employed under DFZLs are not adequately tailored to a state’s needs, the primary deterrent value of the law is often rendered ineffective and disparate impacts on minority and lower-income communities are furthered. For example, consider urban areas or other densely populated sections of a municipality. These areas generally retain more schools, parks, and the like, meaning more drug-free zones per square mile. As the zones per square mile increase, the super-criminalized areas begin to overlap until entire communities are turned into giant, unbroken, drug-free zones. The overlapping zones create a blanket so large that any incentive to avoid participating in drug activity near the

proscribed locations is negated, thus diluting the special protection intended by the law. Aside from negating the intended purpose of the law, states’ failure to tailor their DFZL to their particular needs results in disparate impacts on minorities and lower-income classes, who already are effectively forced to reside in these densely populated areas for socioeconomic reasons. Merely by their minority or low-income status, individuals face and receive harsher sentencing violations than an individual who lives in more affluent, less dense suburbs.

So, what should we do? Tennessee needs to investigate for shortcomings in its DFZL. The state’s legal community has voiced and continues to voice opposition to the current construction of the law, and with recent findings calling into question substantively similar DFZLs in jurisdictions akin to Tennessee, the concern is well warranted. Many other states already reviewed their drug-free zone legislation, found substantial defects, and made beneficial corrections to their law. That path, if taken by Tennessee, can provide the benefit of ensuring our DFZL adequately protects our vulnerable youth. Such a realization however, is impossible without proper investigation. How to fix our DFZL is a fact-specific question, and while other jurisdictional studies provide guidance on the issue, the answer depends upon the types of defects unearthed by a thorough statistical analysis and practical consideration of Tennessee and its DFZL. Ultimately, the circumstances demand that the Tennessee General Assembly and social engineers of this state take legislative and investigative action to ensure the children of our community are as safe from illegal drug activity as possible.

**To read the Mr. Muse’s full report on Tennessee’s Drug-free zones, visit [memphisbar.org/news-publications/mephis-lawyer-magazine/2016](http://memphisbar.org/news-publications/mephis-lawyer-magazine/2016)**

Devon C. Muse is a second-year law student at The University of Memphis Cecil C. Humphreys School of Law. He received his bachelor of arts in political science with a minor in legal studies from East Tennessee State University. Muse is active in the community as well as his law school, where he serves on the Memphis Law Review and Moot Court Board. He previously worked as a judicial extern for the Tennessee Court of Criminal Appeals and as a legal intern for Spivey King & Spivey LLP. He currently works as a graduate research assistant to Professor of Law John Newman, and intends to spend his summer in Nashville, Tennessee as a legal intern for the Tennessee Attorney General’s Office.



# Exhibit 26



has a domain name. 

## Clayton judge frees man, saying prison term was 'just not right'



Steve Visser - The Atlanta Journal-Constitution  
Updated 5:10 p.m Tuesday, July 7, 2015 Filed in [Metro Atlanta / State news](#)

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Charlie Horace Scandrett Jr. was a free man Tuesday after serving 18 years of a 30-year sentence on a drug conviction, a punishment a Clayton County judge said was "just not right."

"I'm going to do today what probably should have been done a long time ago," said Superior Court Judge Matthew O. Simmons as the Scandrett's father and sister wept during a hearing. "Today he can go home to his family."

Scandrett could have been out within five years but the state-court judge who was filling in for Simmons the day he was convicted in 1997 gave him the maximum sentence possible under the recidivist laws at the time, said Patrick Mulvaney, a lawyer for the Southern Center for Human Rights.



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The Southern Center and Clayton County's top prosecutor, normally staunch adversaries, became allies in the case and saw the sentence as excessive, even for the 1990s, when stiff drug sentences were handed down routinely.

District Attorney Tracy Graham Lawson credited Scandrett's 79-year-old father, Charlie Horace Scandrett Sr., for fighting to free his son and the Southern Center, which litigates anti-death penalty cases and prison-reform lawsuits, for taking the case to modify Scandrett's sentence to time served.

"I am proud of his daddy and grateful to his daddy for loving his son so much to see that this happened today," Lawson told the judge Tuesday. "We're here today to just do the right thing."

The younger Scandrett had previous brushes with the law but all for non-violent drug cases, Lawson said. Forest Park Police arrested him during what appeared to be a drug transaction and he was charged with drug possession and convicted.

Linda Scandrett, 59, said her father had spent about \$20,000 on lawyers who later told them their cause was hopeless since laws at the time allowed her brother to be sentenced to 30 years with no parole for possessing less than a gram of cocaine.

An air-condition repairman told the family about the Southern Center. "And then within three weeks we are here," she said Tuesday at the Clayton County courthouse.

Scandrett had three prior drug convictions, two for possession and one for sale. "He was an addict," said Lawson, the prosecutor. "Today this court would have sentenced him to the drug-court program and he wouldn't have ever gone to prison."

In court Tuesday, Simmons said, "It appears that Mr. Scandrett has gotten a much longer sentence than other people similarly situated, It is just not right."

Scandrett did not have a single disciplinary infraction during his nearly two decades in prison and had been trained as a veterinarian technician, Mulvaney said. He noted the state Board of Pardons and Paroles had been unable to assist Scandrett after prison-reform legislation.

While the General Assembly gave relief to dealers convicted under no-parole recidivist laws, lawmakers did not include those convicted of simple possession, Mulvaney said.

He said the Southern Center was evaluating other cases where people are still serving lengthy sentences for old drug-possession convictions.

"This type of case makes me cry," Lawson said. "I was so upset when they told me about the sentence. I said, 'That is just upside down. That is wrong.'"



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# Exhibit 27



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## Pardon Me

### How Executive Clemency Works in Tennessee (and How It Doesn't)

By [Benjamin Raybin](#) on Mon, 08/01/2016 - 12:00am

“How can I get a pardon?” is one of the most common questions I am asked as a criminal defense attorney. In many situations the conviction at issue was the person’s only legal transgression, resulted in no one getting hurt, and is decades old. Nonetheless, my answer always begins with a piece of advice: circle January 2019 on your calendar, because that is the soonest you can reasonably hope for any chance of relief.

Since taking office in 2011, Gov. Bill Haslam has not granted a single pardon. Thus far he is following the path of his predecessor, Phil Bredesen, who issued all 22 of his pardons in the final days of his second term. Withholding clemency until the end of a governor’s term is the trend nationwide.[1]

Given the reelection success of Tennessee’s last five governors, this pattern means a person with a troubled past can expect to time their hopes for redemption in eight year increments.

To provide potential clients with more insight into the pardon process, I attempted to find data on the number of people in Tennessee who apply for clemency and how likely they are to receive it. I learned that these statistics are not tracked by the state and that the facts of each case are not publically available unless relief is granted.

*Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel.*

— Alexander Hamilton, *The Federalist Papers* No. 74

## Legal Background

Although the Tennessee Constitution gives the governor exclusive authority to issue “reprieves and pardons,”[2] the Tennessee Board of Parole is statutorily delegated the duty to review clemency requests and make recommendations at the request of the governor.[3] The Board of Parole is now an independent agency, but until 1979 it was part of the Tennessee Department of Corrections and named the “Tennessee Board of Pardons and Paroles.”[4]

Executive clemency comes in three main categories:

- Pardons grant “forgiveness” for prior convictions and, in some situations, expungement of the conviction and restoration of rights.
- Commutations reduce a sentence currently in effect, such as incarceration to parole or a death sentence to life in prison.
- Exonerations are adjudications that a person is actually innocent of a convicted offense. Required before person can be compensated for wrongful imprisonment.

As a matter of practice the Board of Parole receives all clemency applications,[5] which are available on its website.[6] Staff members within the “Executive Clemency Unit” of the board’s “Operations Division” perform an initial screening to see if an application meets threshold procedural standards, such as completeness.[7] Applicants are advised if required information is lacking.[8]

Pardon applications considered complete are forwarded to the seven board members, who decide by majority vote whether to grant a “formal hearing.” There is no limit for how long the board has to consider an application before making a decision. If a hearing is denied, the application is rejected without ever being seen by the governor. As will be discussed later, this practice may violate the board’s statutory “duty ... to make nonbinding recommendations concerning all requests for pardons.”[9]

If the board conducts a clemency hearing, the recommendation for either approval or denial is sent to the governor.[10] The governor’s subsequent decision is provided to the board, which notifies the applicant.[11]

Public information regarding clemency requests is extremely limited. The board publishes an annual report, which provides the number of applications received and the number that met “the initial screening requirements and were reviewed by the board.”[12] But how many requests are actually granted or at least referred to the governor?

Since the Board of Parole is the gatekeeper for clemency requests, I contacted the board for more information. I learned that the board does not actually keep track of this information. Since the Public Records Act requires disclosure of only existing documents, the only way I could obtain such data was by paying the board to compile it (which it graciously agreed to do for me). I ended up paying \$280 for an annual breakdown of numbers since 2000.

## Clemency Data

Here are the highlights of Tennessee’s clemency statistics since 2000.[13] On average, about 150 people apply for some form of executive relief each year. Of those, only 3 to 4 per year are granted hearings (about 2 percent). This means that about 98 percent of applications are summarily denied by the board without a hearing or review by the governor. Most of the few which receive hearings are ultimately granted relief by the governor.

Commutations (a reduction in the sentence) are the most requested form of clemency but the least granted. Of the 1,086 requests during Gov. Bredesen’s administration, only seven were given hearings and five granted (a total success rate of less than half a percent). Of 322 pardon requests, 22 (6.8 percent) were granted by the governor. Exoneration requests were rarer: of 21 applications, 4 were given hearings and only 2 were granted.

The data I received also reflects the timing of relief. Gov. Bredesen issued all of his pardons and commutations just four days before he left office, 14 and Gov. Haslam has yet to exercise his authority. Thus, aside from a pair of exonerations issued by Gov. Bredesen mid-term, clemency has only been granted on a single day since 2003. Of the 692 applications submitted since Gov. Haslam took office,[14] have been referred to the governor by the board and are awaiting decision, including eight from 2012.[15]

	Bredesen (2003-11)	Haslam (2011-Nov. 2015)
<b>Total Reviewed by Board</b>	<b>1,411</b>	<b>692</b>
Pardons	322	351

Commutations	1,068	327
Exonerations	21	14
<b>Total Files Sent to Governor</b>	29	14
Pardons	19	10
Commutations	7	4
Exonerations	4	0
<b>Total Granted Relief</b>	29	0
Pardons	22	0
Commutations	5	0
Exonerations	2	0

## Clemency Criteria

Who is fortunate enough to make it past the Board of Parole? The Governor's Office denied my Public Records request for documents on pending recommendations, explaining that the board has promulgated rules making its recommendations confidential.[16] Thus, there is essentially no way to evaluate or oversee clemency determinations by the board or the governor, absent looking at granted requests or tracking down applicants.

The Board of Parole does give some guidance on its website. Pardon applicants are told the governor will give them "serious consideration" when

1. they have not been convicted or confined within five years since the completion of the sentence from which they seek a pardon,
2. they have demonstrated "good citizenship" and
3. they can verify a "specific and compelling need for a pardon." [17]

Commutation applicants must demonstrate "exceptional strides in self-development and self-improvement" and that either

1. they are suffering from a serious illness,
2. they are the only person able to care for a close family member with such illness or
3. they have been rehabilitated and are no longer a threat to society.[18]

To be considered for exoneration, the applicant must show clear and convincing evidence that they did not commit the crime and they have exhausted all possible state judicial remedies.[19] In other words, they must affirmatively prove their innocence; an absence of proof is not enough.

The opaque process and vague guidelines makes it difficult to advise clients about their chances for clemency. For example, how does someone demonstrate "a specific and compelling need" for a pardon?[20]

In general, a pardon "forgives" an offense but does not necessarily "forget" it.[21] Pardons automatically restore civil rights, [22] except for firearm rights,[23] but the same is true for a civil restoration of rights that can be sought in circuit court.[24] Pardons can trigger expungement and reclamation of firearm rights, but only if the offense was "non-violent" and there are no other disqualifying convictions.[25] However, it may be possible to get the same relief even without a pardon.[26] Thus, demonstrating a "specific and compelling need" can become a rather complex legal question that may exclude many deserving candidates.

Many of the potential clients with whom I have spoken care very much about either the intangible redemptive nature of a pardon or the more practical ability to possess a firearm to defend their homes or go hunting with their families. Whether

Gov. Haslam (and perhaps more importantly, the Board of Parole) considers such intentions sufficiently “compelling” cannot be known without more information than is publically available. Moreover, such determinations are susceptible to unpredictable variance between gubernatorial administrations.

## Commentary

No discussion on Tennessee executive clemency is complete without mention of the Ray Blanton pardon scandal.[27] In the late 1970s, members of the Blanton administration were arrested for selling pardons. The ensuing furor led to a bipartisan coup to expedite his ouster from office resulting in a lasting stain on our state.[28]

While the manner of Blanton’s pardoning was certainly remarkable, his exercise of gubernatorial clemency power was not. Gov. Malcolm Patterson (1907-11) issued more than 1,400 pardons in four years, compared to less than half that amount granted by Blanton in (almost) as much time.[29] Gov. Patterson’s most famous pardon was of Duncan Cooper for the murder of Senator Edward Carmack as the Tennessee Supreme Court was announcing its affirmance of Cooper’s conviction.[30]

At the national level, presidents have also issued hundreds of pardons and commutations each year until relatively recently.[31] Most of President Obama’s clemency grants have come in the form of mass commutations to non-violent drug offenders,[32] along with a handful of pardons every year or so.[33]

Until the early 1920s, clemency served as the primary temper on often harsh sentences and injustices within the judicial system, where many crimes were capital offenses. Indeed, Tennessee’s historical reliance on clemency is demonstrated by the still-existing but disused statutory procedure for judicial recommendations for a pardon or commutation.[34] Once indeterminate sentencing, the parole system, and greater access to appellate review grew stronger, clemency took a back seat.[35]

Nonetheless, our courts still defer to executive clemency in the pursuit of justice. The United States Supreme Court has held — in denying the availability of federal habeas corpus relief on the ground of actual innocence — that clemency is the “fail safe” in our criminal justice system, which “is the historic remedy for preventing miscarriages of justice.”[36]

Thus, a combination of systematic transformations and political pressures have combined to fundamentally change how many and how frequently clemency grants are issued.

Nonetheless, clemency remains just and appropriate for many Tennesseans with very old convictions who have otherwise contributed to society. The reduced access to clemency for these people is unfortunate.

## Suggestions

There are several options available to strike a better balance. First and most basically, the process could be more clear and transparent. On the front end, applicants could be given better direction about the standard they are to meet. For example, what constitutes a “specific and compelling need for a pardon,” and how does someone demonstrate this?

The application forms could be updated to allow people to better make their case. The instructions on the Pardon form explain that applicants have “the obligation to provide written verification of good citizenship and of compelling and specific need,” described as letters of support.[37] Yet nowhere is the applicant directed to provide any direct statement to the board other than a narrative about the offense. By contrast, Georgia’s application form includes a full page for the applicant to explain his or her reasons for seeking a pardon.[38]

It is imperative for the state to publicize better data. Potential applicants should know that their request has a very small chance of getting approved only once every eight years, if that is to be the practice. Armed with this information, attorneys handling such cases would also be better able to represent current clients and advise potential ones. The public has the right — and the responsibility — to know how constitutional powers are being exercised (or not exercised). The Board of Parole itself is benefited by better monitoring and tracking its clemency caseload.

The data currently available — containing only the number of applications received and the amount meeting the “screening requirements” — is not particularly useful. By contrast, Georgia publishes the number of applications received and a detailed breakdown of the types of pardons granted that year.[39] Tennessee citizens should not have to pay to have such data compiled.

Perhaps more staff and resources should be allocated for clemency requests. The bulk of the board’s work is conducting parole hearings to consider whether inmates should be released. Last year the seven-member board oversaw a whopping 16,881 hearings. However, actual board members conducted only 5 percent of those hearings for the most serious cases. The vast majority were instead conducted by a “hearing officer” who then made a recommendation to the board members for a vote.[40]

By contrast, clemency applications are apparently sent directly to board members after processing.[41] A substantive pre-screening process by subordinate officers may assist busy Board Members in reviewing the dozens of annual clemency applications. Currently, staff members only compile additional information if a hearing has already been granted.[42]

Timing guidelines would facilitate prompt consideration of applications. The data I received does not indicate how quickly the board makes decisions to deny an application or to conduct a hearing. However, in one recently-publicized case, two state lawmakers promoting a lingering exoneration request were reportedly “boiling mad and tired of getting the runaround from both the Tennessee Board of Parole and the office of Gov. Bill Haslam.”[43]

There may also be legal problems with the way Tennessee reviews clemency requests. While the governor is given sole authority to grant relief, the Board of Parole is statutorily delegated the “duty ... to advise with and make recommendations to the governor” with respect to clemency requests.”[44] Pursuant to those laws Gov. Haslam has asked the board “to consider and to make non-binding recommendations.”[45]

However, the board has sent just 2 percent of applications to the governor’s office for review since 2000. This means that the board has unilaterally denied 98 percent of all applications without the governors even having the opportunity to see them.[46]

This practice would appear to conflict with our constitution’s assignment of clemency power solely to the governor.[47] While the governor could perhaps delegate the denial of pardons to the board, our current executive has not done so. Thus, apparently all applications should be sent to the governor, even if most have unfavorable recommendations.

An interested public or media could put more pressure on our governors to grant clemency more often throughout their time in office. While we sometimes see stories and petitions shortly before a scheduled execution, interest is virtually nonexistent for less-urgent pardon requests. There is simply no practical reason for clemency to be issued primarily (or entirely) at the end of a governor’s term, other than immunization from political fallback. Thus, by removing accountability on clemency decisions, Tennessee’s current practice makes it more likely that we will experience the abuses of power that still echo from the Blanton administration.

A more drastic remedy would be to eliminate the governor from the clemency process altogether, thereby divorcing what perhaps should be an apolitical process from our chief politician. Just as the Board of Parole makes recommendations on applications as they are received, so could the board grant them without waiting on an artificial eight-year cycle.

Several states have implemented such changes. In Georgia, there were “serious questions raised about the handling of pardons by some governors’ offices,” resulting in a 1943 constitutional amendment to reassign clemency power from the governor to an independent board, whose members are appointed by the governor following confirmation by the senate. [48] In recent years, the Georgia Board of Pardons and Paroles has granted relief in a steady stream rather than sporadic spurts.

While such modification in Tennessee would also require a constitutional amendment, this question is worthy of discussion.

## Conclusion

An improved judicial system may have reduced the historical justifications of clemency to second-guess the determinations of guilt and an appropriate sentence upon conviction. But our courts do not have a mechanism to decide whether a punishment remains just and appropriate years later.

By providing relief otherwise unavailable through the judiciary, clemency remains an important and essential part of our justice system and the constitutional framework of checks and balances. We should reevaluate how clemency is granted in Tennessee to ensure that it is continuing to satisfy these purposes.

## Notes

1. Cathleen Burnett, "The Failed Failsafe: The Politics of Executive Clemency," 8 *Tex. J. on C.L. & C.R.* 191, 192-93 (2003).
2. Tenn. Const. Art. III, Sec. 6. This power is codified at *Tenn. Code Ann.* § 40-27-101, et sec.
3. *Tenn. Code Ann.* §§ 40-28-104(a)(10), 40-28-126(a).
4. 1979 Tenn. Pub. Acts 853, 868; Tennessee Board of Parole, Historical Timeline, <http://www.tn.gov/bop/article/historical-timeline>.
5. Sheila Burke, "Lawmakers Demand State Pay Man for Wrongful Imprisonment," Associated Press, June 16, 2016, <http://bigstory.ap.org/article/3dde4397a2024283b6106ec7b151b83b/lawmaker...> (Haslam spokesperson stating: "It is the administration's policy to consider executive clemency requests after receiving a recommendation from the Board of Probation and Parole."). Data from Gov. Bredesen's tenure reflects that he considered at least a few requests that had not been submitted to the board.
6. <https://www.tn.gov/bop/article/bop-executive-clemency-unit>.
7. Tenn. Comp. R. & Regs. 1100-01-01-.16(1)(a).
8. Tenn. Comp. R. & Regs. 1100-01-01-.16(1)(b).
9. *Tenn. Code Ann.* § 40-28-104(a)(10).
10. A written list of the names of applicants receiving hearings is also sent to standing committees of the General Assembly as well as the District Attorney General in the district of conviction. Tenn. Comp. R. & Regs. 1100-01-01-.16(f), (g).
11. [https://www.tn.gov/assets/entities/bop/attachments/BOP\\_Executive\\_Clemenc...](https://www.tn.gov/assets/entities/bop/attachments/BOP_Executive_Clemenc...)
12. Board of Parole, Annual Report 2014-15, p. 13, [https://www.tn.gov/assets/entities/bop/attachments/2014-15\\_BOP\\_Annual\\_Report.pdf](https://www.tn.gov/assets/entities/bop/attachments/2014-15_BOP_Annual_Report.pdf).
13. I received the data in November 2015, so it is current only though that time. Although I expect more applications have been received and referred to the governor between that time and publication of this article, I have found no evidence of any grants by the governor.
14. Jeff Woods, "Bredesen commutes death sentence, pardons 22," *Nashville City Paper*, Jan. 11, 2011, <http://nashvillecitypaper.com/content/city-news/bredesen-commutes-death-....>
15. It appears Gov. Sundquist did not follow this practice. My request of data beginning in the year 2000 included the final three years of his governorship, which reflected one grant of clemency in 2000-01, four in 2001-02, and six in 2002-03. I have not discussed his clemency practices further in this article because I do not have data from earlier in his term.
16. The State's Public Records request denial letter, which cited *Tenn. Code Ann.* § 40-28-119(c) and Rule 11-1-1-.15(1)(a) (6), is on file with the author.
17. [https://www.tn.gov/assets/entities/bop/attachments/BOP\\_Pardon\\_Applicatio....](https://www.tn.gov/assets/entities/bop/attachments/BOP_Pardon_Applicatio....)
18. [http://www.tn.gov/assets/entities/bop/attachments/BOP\\_Commutation\\_Applic....](http://www.tn.gov/assets/entities/bop/attachments/BOP_Commutation_Applic....)
19. [http://www.tn.gov/assets/entities/bop/attachments/BOP\\_Exoneration\\_Applic....](http://www.tn.gov/assets/entities/bop/attachments/BOP_Exoneration_Applic....) My office handled three exoneration hearings during the Bredesen administration.
20. The pardon application form provides: "Generally, the need for a pardon will not be found compelling when other provisions of the law provide appropriate relief for the petitioner."
21. *State v. Blanchard*, 100 S.W.3d 226, 231 (Tenn. Crim. App. 2002).
22. *Id.*
23. *Blackwell v. Haslam*, No. M2012-01991-COA-R3CV, 2013 WL 3379364, \*11 (Tenn. Ct. App. June 28, 2013).
24. *Tenn. Code Ann.* § 40-29-101 et sec.
25. *Tenn. Code Ann.* § 40-32-101(h).

26. *Tenn. Code Ann.* § 40-32-101(g).
27. The Nashville Bar Association will conduct a three-hour CLE on Gov. Blanton and his administration on Nov. 10, 2016.
28. See Keel Hunt, *Coup: The Day the Democrats Ousted Their Governor, Put Republican Lamar Alexander in Office Early, and Stopped a Pardon Scandal* (Vanderbilt Univ. Press, 2013).
29. Donald F. Paine, *Sex, Murder and UT Football: The Trials of Lawyer James E. Fulton for Murdering Lawyer Sam Parker*, *Tenn. B.J.*, December 2003, at 37 n.2.
30. "Cooper Pardoned by Gov. Patterson," *N.Y. Times*, April 14, 1910.
31. Margaret Colgate Love, "Of Pardons, Politics and Collar Buttons: Reflections on the President's Duty to Be Merciful," 27 *Fordham Urb. L.J.* 1483, 1488 (2000).
32. Department of Justice, *Commutations Granted by President Barack Obama*, <https://www.justice.gov/pardon/obama-commutations>.
33. Department of Justice, *Pardons Granted by President Barack Obama*, <https://www.justice.gov/pardon/obama-commutations> <https://www.justice.gov/pardon/obama-pardons>.
34. The judge may stay "execution of the sentence for the amount of time as may be necessary to make application to the executive for a pardon or commutation of punishment." *Tenn. Code Ann.* § 40-22-101. See also *Tenn. Code Ann.* § 40-22-102.
35. Love, 27 *Fordham Urb. L.J.* at 1491.
36. *Herrera v. Collins*, 506 U.S. 390, 412, 415 (1993).
37. [https://www.tn.gov/assets/entities/bop/attachments/BOP\\_Pardon\\_Applicatio....](https://www.tn.gov/assets/entities/bop/attachments/BOP_Pardon_Applicatio...)
38. [https://pap.georgia.gov/sites/pap.georgia.gov/files/ParoleConsideration/....](https://pap.georgia.gov/sites/pap.georgia.gov/files/ParoleConsideration/...)
39. Georgia State Board of Pardons and Paroles, *Annual Report 2015*, p. 20-22, [https://www.joomag.com/magazine/ga-parole-fy2015-annual-report/049965200....](https://www.joomag.com/magazine/ga-parole-fy2015-annual-report/049965200...) The data indicates Georgia is far more generous, granting 481 of 1,982 applications in 2015 alone.
40. Board of Parole, *Annual Report 2014-15*, p. 6, [https://www.tn.gov/assets/entities/bop/attachments/2014-15\\_BOP\\_Annual\\_Re....](https://www.tn.gov/assets/entities/bop/attachments/2014-15_BOP_Annual_Re...)
41. [https://www.tn.gov/assets/entities/bop/attachments/BOP\\_Executive\\_Clemenc....](https://www.tn.gov/assets/entities/bop/attachments/BOP_Executive_Clemenc...)
42. *Tenn. Comp. R. & Regs.* 1100-01-01-.16 (d)(3).
43. Burke, *supra* note 5.
44. *Tenn. Code Ann.* §§ 40-28-104(a)(10) and 40-28-126(a).
45. [https://www.tn.gov/assets/entities/bop/attachments/BOP\\_Executive\\_Clemenc....](https://www.tn.gov/assets/entities/bop/attachments/BOP_Executive_Clemenc...)
46. Since inmates are summarily denied review if they are within two years of parole consideration, inmates who are denied parole by the board and given new hearings within that time would never have the opportunity to be heard by the governor under the current policy.
47. *Tenn. Const. Art. III, Sec. 6.*
48. Georgia State Board of Pardons and Paroles, *About*, <http://pap.georgia.gov/about>.



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<ul style="list-style-type: none"> <li>• Fastcase</li> <li>• Member Search</li> <li>• TBA Member Benefits</li> <li>• Government Affairs Update</li> <li>• Joblink</li> <li>• Law Practice Management</li> <li>• Legal Links</li> <li>• Local Rules of Court</li> <li>• Mediation</li> <li>• Opinion Search</li> <li>• Tennessee Rules of Professional Conduct</li> <li>• TLAP</li> <li>• Update Information</li> </ul>	<ul style="list-style-type: none"> <li>• Course Catalog</li> <li>• Faculty Directory</li> <li>• Create CLE Account</li> <li>• CLE Help</li> <li>• CLE Faculty Guide</li> </ul> <p data-bbox="467 478 594 510" style="text-align: center;"><b>Programs</b></p> <hr/> <ul style="list-style-type: none"> <li>• Corporate Counsel Pro Bono Initiative</li> <li>• Government Affairs Update</li> <li>• Law Student Outreach</li> <li>• Leadership Law</li> <li>• Legal Assistance Volunteers For Patent Applicants</li> <li>• Public Education</li> <li>• TBA Academy</li> <li>• Tennessee High School Mock Trial</li> <li>• TBA Mentoring Program</li> <li>• TLAP</li> <li>• 2017 TBA Annual Convention</li> </ul>	<ul style="list-style-type: none"> <li>• Committees</li> <li>• LAW PAC</li> <li>• Leadership Law Alumni</li> <li>• Sections</li> <li>• TBASCUS</li> <li>• Tennessee Legal Organizations</li> <li>• Young Lawyers Division</li> <li>• YLD Fellows</li> </ul>	<ul style="list-style-type: none"> <li>• TBA Law Blog</li> <li>• TBA Today</li> <li>• Tennessee Bar Journal</li> <li>• Disciplinary Listings</li> <li>• Blog Listing</li> <li>• TBA All Access Network</li> <li>• Tennessee Rules of Professional Conduct</li> <li>• Tennessee Volunteer Attorney</li> <li>• The 2014 Legal Handbook for Tennessee Seniors</li> <li>• TBA Shopping Center</li> </ul>	<ul style="list-style-type: none"> <li>• Access to Justice Committee</li> <li>• Attorney Web Pages</li> <li>• Celebrate Pro Bono Month 2017</li> <li>• Corporate Counsel Pro Bono Initiative</li> <li>• Disaster Relief Assistance</li> <li>• Finding an Attorney</li> <li>• Hometown Support: Legal Help For Our Military</li> <li>• I Want to Do Pro Bono</li> <li>• Justice for All</li> <li>• Member Search</li> <li>• TN Free Legal Answers</li> </ul> <p data-bbox="1430 1136 1539 1167" style="text-align: right;"><b>Calendar</b></p> <hr/> <ul style="list-style-type: none"> <li>• CLE Programs</li> <li>• TBA Events</li> </ul>

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# Exhibit 28



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102

DANIEL A. HORWITZ, ESQ.  
APT 531  
1803 BROADWAY  
NASHVILLE, TN 37203-2766

**Request Type: Certified Copies**  
Request #: 255381

Issuance Date: 10/27/2017  
Copies Requested: 1

**Document Receipt**

Receipt #: 003635868 Filing Fee: \$20.00  
Payment-Account - #61318 DANIEL A. HORWITZ, ESQ., NASHVILLE, TN \$20.00

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that **Positive Inner City Kids**, Control # 810202 was formed or qualified to do business in the State of Tennessee on 08/17/2015. Positive Inner City Kids has a home jurisdiction of TENNESSEE and is currently in an Active status. The attached documents are true and correct copies and were filed in this office on the date(s) indicated below.

Tre Hargett  
Secretary of State

Processed By: Kristen McCoy

The attached document(s) was/were filed in this office on the date(s) indicated below:

<b>Reference #</b>	<b>Date Filed</b>	<b>Filing Description</b>
B0126-4255	08/17/2015	Initial Filing
B0260-3009	06/01/2016	Notice of Determination
B0264-1606	06/15/2016	2015 Annual Report (Due 04/01/2016)
B0402-8251	06/01/2017	Notice of Determination
B0416-6801	07/13/2017	2016 Annual Report (Due 04/01/2017)



000810202

B0126-4255 08/17/2015 8:54 AM Received by Tennessee Secretary of State Tre Hargett

**CHARTER**  
**NONPROFIT CORPORATION** (ss-4418)

Page 1 of 2



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102  
(615) 741-2286  
Filing Fee: \$100.00

*For Office Use Only*

Control # 000810202

Amount Due: \$100.00

Please file before 09/09/2015

The undersigned, acting as incorporator(s) of a nonprofit corporation under the provisions of the Tennessee Nonprofit Corporation Act, adopt the following Articles of Incorporation.

1. The name of the corporation is: Positive Inner City Kids

2. Name Consent: (Written Consent for Use of Indistinguishable Name)

This entity name already exists in Tennessee and has received name consent from the existing entity.

3. This company has the additional designation of:

4. The name and complete address of its initial registered agent and office located in the State of Tennessee is:

CALVIN E BRYANT JR  
4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063  
DAVIDSON COUNTY

5. Fiscal Year Close Month: December      Period of Duration: Perpetual

6. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time is:  
(none)      (Not to exceed 90 days)

7. The corporation is not for profit.

8. Please complete all of the following sentences by checking one of the two boxes in each sentence:

This corporation is a  public benefit corporation /  mutual benefit corporation.  
This corporation is a  religious corporation /  not a religious corporation.  
This corporation will  have members /  not have members.

9. The complete address of its principal executive office is:

4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063  
DAVIDSON COUNTY

(Note: Pursuant to T.C.A. §10-7-503 all information on this form is public record.)



**CHARTER**  
**NONPROFIT CORPORATION** (ss-4418)



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102  
(615) 741-2286  
Filing Fee: \$100.00

*For Office Use Only*

Control # 000810202

Amount Due: \$100.00  
Please file before 09/09/2015

**The name of the corporation is:** Positive Inner City Kids

**10. The complete mailing address of the entity (if different from the principal office) is:**

**11. List the name and complete address of each incorporator:**

Title	Name	Business Address	City, State, Zip
Incorporator	Calvin E Bryant Jr	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207

**12. School Organization:** (required if the additional designation of "School Organization - Exempt" is entered in section 3.)

- I certify that pursuant to T.C.A. §49-2-611, this nonprofit corporation is exempt from the \$100 filing fee required by T.C.A. §48-51-303(a)(1).
- This nonprofit corporation is a "school support organization" as defined in T.C.A. §49-2-603(4)(A).
- This nonprofit corporation is an educational institution as defined in T.C.A. §48-101-502(b).

**13. Insert here the provisions regarding the distribution of assets upon dissolution:**

In the event of dissolution of the Corporation, the residual assets of the Corporation (after all creditors of the Corporation have been paid), shall be distributed to Calvin E Bryant Jr. (President/CEO).

**14. Other Provisions:**

*(Note: Pursuant to T.C.A. §10-7-503 all information on this form is public record.)*

Aug 10, 2015 5:25PM  
Signature Date

Electronic  
Incorporator's Signature

Calvin E Bryant Jr  
Incorporator's Name (printed or typed)

B0126-4256 08/17/2015 8:54 AM Received by Tennessee Secretary of State Tre Hargett



05409243



# Tennessee Corporation Annual Report Form

AR Filing #: 05409243

FILED: Jun 15, 2016 3:17PM

File online at: <http://TNBear.TN.gov/AR>

Due on/Before: 04/01/2016

Reporting Year: 2015

**Annual Report Filing Fee Due:**

\$20 if no changes are made in block 3 to the registered agent/office, or

\$40 if any changes are made in block 3 to the registered agent/office

This Annual Report has been successfully paid for and filed. Please keep this report for your records.

**Payment-Credit Card - State Payment Center - CC #: 3676115319****SOS Control Number:** 810202

Nonprofit Corporation - Domestic

Date Formed: 08/17/2015

Formation Locale: TENNESSEE

**(1) Name and Mailing Address:**Positive Inner City Kids  
4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063**(2) Principal Office Address:**4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063**(3) Registered Agent (RA) and Registered Office (RO) Address:**CALVIN E BRYANT JR  
4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063Agent Changed: NoAgent County: DAVIDSON COUNTY

(4) Name and business address (with zip code) of the President, Secretary and other principal officers.

Title	Name	Business Address	City, State, Zip
President	Calvin Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207
Secretary	Ann Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207

(5) Board of Directors names and business address (with zip code). None, or listed below.

Name	Business Address	City, State, Zip
Calvin Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207

(6) This section applies to non-profit corporations ONLY.

A. Our records reflect that your non-profit corporation is a public benefit or a mutual benefit corporation as indicated.

If blank or incorrect, please check appropriately: Public  MutualB. If a Tennessee religious corporation, please check here if blank: Religious

(7) Signature: Electronic

(8) Date: 06/15/2016

(9) Type/Print Name: Calvin Bryant

(10) Title: President

B0264-1606 06/15/2016 3:17 PM Received by Tennessee Secretary of State Tre Hargett



05885632



# Tennessee Corporation Annual Report Form

AR Filing #: 05885632

FILED: Jul 13, 2017 10:41AM

File online at: <http://TNBear.TN.gov/AR>

Due on/Before: 04/01/2017

Reporting Year: 2016

**Annual Report Filing Fee Due:**

\$20 if no changes are made in block 3 to the registered agent/office, or

\$40 if any changes are made in block 3 to the registered agent/office

This Annual Report has been successfully paid for and filed. Please keep this report for your records.

**Payment-Credit Card - State Payment Center - CC #: 3706712947****SOS Control Number:** 810202

Nonprofit Corporation - Domestic

Date Formed: 08/17/2015

Formation Locale: TENNESSEE

**(1) Name and Mailing Address:**Positive Inner City Kids  
4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063**(2) Principal Office Address:**4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063**(3) Registered Agent (RA) and Registered Office (RO) Address:**CALVIN E BRYANT JR  
4371 SUMMERTIME DR  
NASHVILLE, TN 37207-1063Agent Changed: NoAgent County: DAVIDSON COUNTY**(4) Name and business address (with zip code) of the President, Secretary and other principal officers.**

Title	Name	Business Address	City, State, Zip
President	Calvin Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207
Secretary	Ann Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207

**(5) Board of Directors names and business address (with zip code). \_\_\_ None, or listed below.**

Name	Business Address	City, State, Zip
Calvin Bryant	4371 SUMMERTIME DRIVE	NASHVILLE, TN 37207

**(6) This section applies to non-profit corporations ONLY.**

A. Our records reflect that your non-profit corporation is a public benefit or a mutual benefit corporation as indicated.

If blank or incorrect, please check appropriately: \_\_\_ Public X Mutual

B. If a Tennessee religious corporation, please check here if blank: \_\_\_ Religious

(7) Signature: Electronic

(8) Date: 07/13/2017

(9) Type/Print Name: SABRIYA RASHEED

(10) Title: ACCOUNTANT