Selected Domestic Violence Sexual Assault, and Stalking Laws

2019-2020

Produced by:

TENNESSEE COALITION TO END DOMESTIC AND SEXUAL VIOLENCE

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I. Orders of Protection

36-3-601. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Abuse" means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor;

(2) "Adult" means any person eighteen (18) years of age or older, or who is otherwise emancipated;

(3)

(A) "Court," in counties having a population of not less than two hundred thousand (200,000) (260,000) nor more than eight hundred thousand (800,000), according to the 1980 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters; PC 433

(B) Notwithstanding subdivision (3)(A), "court," in counties with a metropolitan form of government with a population of more than one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters and the general sessions court. In such county having a metropolitan form of government, a judicial commissioner may issue an ex parte order of protection. Nothing in this definition may be construed to grant jurisdiction to the general sessions court for matters relating to child custody, visitation, or support;

(C) "Court," in all other counties, means any court of record with jurisdiction over domestic relation matters or the general sessions court;

(D) "Court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing ex parte orders of protection when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available;

(E) In counties having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, "court" means any court of record with jurisdiction over domestic relations matters or the general sessions criminal court. In such counties, "court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing any order of protection pursuant to this part when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available. Nothing in this definition may be construed to grant jurisdiction to the general sessions court, both criminal and civil, for matters relating to child custody, visitation, or support;

(F) Any appeal from a final ruling on an order of protection by a general sessions court or by any official authorized to issue an order of protection under this subdivision (3) shall be to the circuit or chancery court of the county. Such appeal shall be filed within ten (10) days and shall be heard de novo;

(4) "Domestic abuse" means committing abuse against a victim, as defined in subdivision (5);

(5) "Domestic abuse victim" means any person who falls within the following categories:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) Adults or minors related by blood or adoption;

(E) Adults or minors who are related or were formerly related by marriage; or

(F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);

(6) "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

(7) "Petitioner" means the person alleging domestic abuse, sexual assault or stalking in a petition for an order for protection;

(8) "Preferred response" means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;

(9) "Respondent" means the person alleged to have abused, stalked or sexually assaulted another in a petition for an order for protection;

(10) "Sexual assault victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, as defined in § 39-13-502, § 39-13-503, § 39-13-506 or § 39-13-522, or sexual battery, as defined in § 39-13-504, § 39-13-505, or § 39-13-527;

(11) "Stalking victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking, as defined in § 39-17-315; and

(12) "Weapon" means a firearm or a device listed in § 39-17-1302(a)(1)-(7).

36-3-602. Application of part - Venue.

(a) Any domestic abuse victim, stalking victim or sexual assault victim who has been subjected to, threatened with, or placed in fear of, domestic abuse, stalking, or sexual assault, may seek relief under this part by filing a sworn petition alleging domestic abuse, stalking, or sexual assault by the respondent.

(b) Any petition filed by an unemancipated person under eighteen (18) years of age shall be signed by one (1) of that person's parents or by that person's guardian. The petition may also be signed by a caseworker at a not-for-profit organization that receives funds pursuant to title 71, chapter 6, part 2 for family violence and child abuse prevention and shelters; provided, however, that a petition signed by a caseworker may not be filed against the unemancipated minor's parent or legal guardian. In such case, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon the primary residential parent. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the unemancipated person by the department or the guardian ad litem.

(c) [Deleted by 2018 amendment.]

(d) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the domestic abuse, stalking or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

36-3-603. Duration of protection order - Petition for protection order in divorce action.

(a) If an order of protection is in effect at the time either the petitioner or respondent files a complaint for divorce, the order of protection shall remain in effect until the court to which the divorce action is assigned:

(1) Modifies the order;

(2) Dissolves the order; or

(3) Makes the order part of the divorce decree.

(b) If the court modifies the order or makes the order of protection part of the divorce decree, the court shall issue a separate order of protection.

(c) The clerk shall immediately forward a copy of any order of protection issued and any subsequent modifications to the petitioner, respondent, and the local law enforcement agencies having jurisdiction in the area where the petitioner resides in the manner provided by § 36-3-609(e).

(d) Nothing in this section shall prohibit a petitioner from requesting relief under this part in a divorce action.

36-3-604. Forms.

(a)

(1) The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the website of the administrative office of the courts.

(2) The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other assistance that is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

(b) The administrative office of the courts, in consultation with the domestic violence coordinating council, shall develop a petition for orders of protection form, an amended order of protection form, an ex parte order of protection form and other forms that are found to be necessary and advisable. These forms shall be revised as the laws relative to orders of protection and ex parte orders of protection are amended by the general assembly. To the extent possible, the forms shall be uniform with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c) The administrative office of the courts shall revise the petition for an order of protection form to fully advise the respondent of this part in language substantially similar to the following:

(1) If the order of protection is granted in a manner that fully complies with 18 U.S.C. § 922(g)(8), the respondent is required to terminate physical possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms that the respondent possesses within forty-eight (48) hours of the granting of the order;

(2) It is a criminal offense for a person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8), to possess a firearm while that order is in effect; and

(3) The issuance of an order of protection may terminate or, at least, suspend the individual's right to purchase or possess a firearm.

(d) These forms shall be used exclusively in all courts exercising jurisdiction over orders of protection.

36-3-605. Protection order - Extension - Hearing.

(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse, stalking or

sexual assault by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel. In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent, pursuant to the requirements of this section.

(d) Within the time the order of protection is in effect, any court of competent jurisdiction may modify the order of protection, either upon the court's own motion or upon motion of the petitioner. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in violation of the order, the court may extend the order of protection up to five (5) years. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in a second or subsequent violation of the order, the court may extend the order of protection up to ten (10) years. No new petition is required to be filed in order for a court to modify an order or extend an order pursuant to this subsection (d).

36-3-606. Scope of protection order.

(a) A protection order granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse, stalking or sexual assault or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;

(2) Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Prohibiting the respondent from stalking the petitioner, as defined in § 39-17-315;

(4) Granting to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both;

(5) Directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;

(6) Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties;

(7) Awarding financial support to the petitioner and such persons as the respondent has a duty to support. Except in cases of paternity, the court shall not have the authority to order financial support unless the petitioner and respondent are legally married. Such order may be enforced pursuant to chapter 5 of this title;

(8) Directing the respondent to attend available counseling programs that address violence and control issues or substance abuse problems. A violation of a protection order or part of such order that directs counseling pursuant to this subdivision (a)(8) may be punished as criminal or civil contempt. Section 36-3-610(a) applies with respect to a nonlawyer general sessions judge who holds a person in criminal contempt for violating this subdivision (a)(8);

(9) Directing the care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. In no instance shall the animal be placed in the care, custody, or control of the respondent, but shall instead be placed in the care, custody or control of the petitioner or in an appropriate animal foster situation;

(10) Directing the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter, notwithstanding any provision of this part to the contrary; or

(11) Directing the respondent to pay the petitioner all costs, expenses and fees pertaining to the petitioner's breach of a lease or rental agreement for residential property if the petitioner is a party to the lease or rental agreement and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the petitioner or the petitioner's children. Nothing in this subdivision (a)(11) shall be construed as altering the terms of, liability for, or parties to such lease or rental agreement.

(12) Ordering a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner pursuant to § 36-3-621.

(b) Relief granted pursuant to subdivisions (a)(4)-(8) shall be ordered only after the petitioner and respondent have been given an opportunity to be heard by the court.

(c) Any order of protection issued under this part shall include the statement of the maximum penalty that may be imposed pursuant to § 36-3-610 for violating such order.

(d) No order of protection made under this part shall in any manner affect title to any real property.

(e) An order of protection issued pursuant to this part shall be valid and enforceable in any county of this state.

(f) An order of protection issued pursuant to this part that fully complies with 18 U.S.C. § 922(g)(8) shall contain the disclosures set out in § 36-3-625(a).

36-3-607. Bond not required.

The court shall not require the execution of a bond by the petitioner to issue any order of protection under this part.

36-3-608. Duration of protection order - Modification.

(a) All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year.

(b) The court may modify its order at any time upon subsequent motion filed by either party together with an affidavit showing a change in circumstances sufficient to warrant the modification.

36-3-609. Copies of protection order to be issued.

(a) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), any subsequent order of protection shall be effective when the order is entered. For purposes of this section, an order shall be considered entered when such order is signed by:

(1) The judge and all parties or counsel;

(2) The judge and one party or counsel and contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(3) The judge and contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(b) As used in subsection (a), service upon a party or counsel shall be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing. In order to complete service of process in a timely manner on a party who lives outside the county where the order was issued, the clerk may transmit the order to the sheriff in the appropriate county by facsimile or other electronic transmission.

(c) Notwithstanding when an order is considered entered under subsection (a), if the court finds that the protection of the petitioner so requires, the court may order, in the manner provided by law or rule, that the order of protection take effect immediately.

(d) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered regardless of whether the respondent is present at the hearing.

(e) A copy of any order of protection and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent, the local law enforcement agencies having jurisdiction in the area where the petitioner resides, and any court other than the issuing court in which the respondent and petitioner are parties to an action. The petitioner and respondent shall notify the judge of any such court. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit it to the national crime information center.

36-3-610. Violation of order or consent agreement - Civil or criminal contempt -Financial penalty.

(a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(b)

(1) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars ($50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court.

(2) The judge upon finding a violation of an order of protection or a court-approved consent order shall require a bond of the respondent until such time as the order of protection expires. Such bond shall not be less than two thousand five hundred dollars ($2,500) and shall be payable upon forfeit as provided. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required. Any respondent for whom bond has been set may deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bond. The clerk of the court may deposit funds received in lieu of bonds, or any funds received from the forfeiture of bonds, in an interest bearing account. Any interest received from such accounts shall be payable to the office of the clerk. Failure to comply with this subsection (b) may be punished by the court as a contempt of court as provided in title 29, chapter 9.

(3) If a respondent posting bond under this subsection (b) does not comply with the conditions of the bond, the court having jurisdiction shall enter an order declaring the bond to be forfeited. Notice of the order of forfeiture shall be mailed forthwith by the clerk to the respondent at the respondent's last known address. If the respondent does not within thirty (30) days from the date of the forfeiture satisfy the court that compliance with the conditions of the bond was met, the court shall enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. The judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

(4) Nothing in this section shall be construed to limit or affect any remedy in effect on July 1, 2010.

(c) Upon collecting the civil penalty imposed by subsection (b), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

(d) The proceeds of a judgment for the amount of the bond pursuant to this section shall be paid quarterly to the administrative office of the courts. The quarterly payments shall be due on the fifteenth day of the fourth month of the year; the fifteenth day of the sixth month; the fifteenth day of the ninth month; and on the fifteenth day of the first month of the next succeeding year. The proceeds shall be allocated equally on an annual basis as follows:

(1) To provide legal representation to low-income Tennesseans in civil matters in such manner as determined by the supreme court as described in § 16-3-808(c); provided, that one fourth (1/4) of such funds shall be allocated to an appropriate statewide nonprofit organization capable of providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation to indigents. The remainder shall be distributed to organizations delivering direct assistance to clients with Legal Services Corporation funding as referenced in the Tennessee State Plan for Civil Legal Justice approved in March, 2001, by the Legal Services Corporation;

(2) To the domestic violence state coordinating council, created by title 38, chapter 12, part 1;

(3) To the Tennessee Court Appointed Special Advocates Association (CASA); and

(4) To Childhelp.

36-3-611. Arrest for violation of protection order.

(a) An arrest for violation of an order of protection issued pursuant to this part may be with or without warrant. Any law enforcement officer shall arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the violation occurred;

(2) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and

(3) The officer has verified whether an order of protection is in effect against the respondent. If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.

(b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge of such order.

36-3-612. Violation of protection order or restraining order - Elements - Arrest - Notification to protected party - Continued validity and enforceability.

(a) A person arrested for the violation of an order of protection issued pursuant to this part or a restraining order or court-approved consent agreement, shall be taken before a magistrate or the court having jurisdiction in the cause without unnecessary delay to answer a charge of contempt for violation of the order of protection, restraining order or court-approved consent agreement, and the court shall:

(1) Notify the clerk of the court having jurisdiction in the cause to set a time certain for a hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement within ten (10) working days after arrest, unless extended by the court on the motion of the arrested person;

(2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement; and

(3) Notify the person to whom the order of protection, restraining order or court-approved consent agreement was issued to protect and direct the party to show cause why a contempt order should issue.

(b) Either the court that originally issued the order of protection or restraining order or a court having jurisdiction over orders of protection or restraining orders in the county where the alleged violation of the order occurred shall have the authority and jurisdiction to conduct the contempt hearing required by subsection (a). If the violation is of a court-approved consent agreement, the same court that approved the agreement shall conduct the contempt hearing for any alleged violation of it. If the court conducting the contempt hearing is not the same court that originally issued the order of protection or restraining order, the court conducting the hearing shall have the same authority to punish as contempt a violation of the order of protection or restraining order as the court originally issuing the order.

36-3-613. Leaving residence or use of necessary force - Right to relief unaffected.

(a) The petitioner's right to relief under this part is not affected by the petitioner's leaving the residence or household to avoid domestic abuse, stalking or sexual assault.

(b) The petitioner's right to relief under this part is not affected by use of such physical force against the respondent as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury, domestic abuse, or sexual assault.

36-3-614. Failure to contest paternity - Paternity tests and comparisons.

(a) Failure of a respondent to contest paternity in any proceeding commenced pursuant to this part shall not be construed as an admission of paternity by such respondent, nor shall such failure to contest be admissible as evidence against the respondent at any pending or subsequent paternity proceeding.

(b) Where paternity is contested in a proceeding commenced pursuant to this part, if the court orders the parties to submit to any tests and comparisons to determine parentage authorized by § 24-7-112, the court may grant an order of protection pending the outcome of any such tests and comparisons.

36-3-615. Notification to victim that family or household member arrested for assault may be released on bond.

(a) After a person has been arrested for assault pursuant to § 39-13-101, aggravated assault pursuant to § 39-13-102, against a victim as defined in § 36-3-601, domestic assault pursuant to § 39-13-111, or violation of a protective order pursuant to § 39-13-113, the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date of trial for the offense.

(b) Subsection (a) is solely intended to be a notification provision, and no cause of action is intended to be created thereby.

36-3-616. Domestic violence community education fund.

(a) There is hereby established a general fund reserve to be allocated through the general appropriations act, which shall be known as the domestic violence community education fund. Moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund on any June 30. Any excess revenues or interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(b) The general assembly shall appropriate, through the general appropriations act, moneys from the domestic violence community education fund to the department of human services. Such appropriations shall be specifically earmarked for the purposes set out in this section.

(c) All moneys appropriated from the domestic violence community education fund shall be used exclusively by the department to provide grants to the Tennessee task force against domestic violence. The commissioner of human services shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. Such grants shall be for the purpose of providing education, training and technical assistance to communities on domestic violence.

36-3-617. Protection order -- Filing costs and assistance.

(a)

(1) Notwithstanding any other law to the contrary, no domestic abuse victim, stalking victim or sexual assault victim shall be required to bear the costs, including any court costs, filing fees, litigation taxes or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte order of protection, order of protection, or a petition for either such order, whether issued inside or outside the state. If the court, after the hearing on the petition, issues or extends an order of protection, all court costs, filing fees, litigation taxes and attorney fees shall be assessed against the respondent.

(2) If the court does not issue or extend an order of protection, the court may assess all court costs, filing fees, litigation taxes and attorney fees against the petitioner if the court makes the following finding by clear and convincing evidence:

(A) The petitioner is not a domestic abuse victim, stalking victim or sexual assault victim and that such determination is not based on the fact that the petitioner requested that the petition be dismissed, failed to attend the hearing or incorrectly filled out the petition; and

(B) The petitioner knew that the allegation of domestic abuse, stalking, or sexual assault was false at the time the petition was filed.

(b)

(1) The clerk of the court may provide order of protection petition forms to agencies that provide domestic violence assistance.

(2) Any agency that meets with a victim in person and recommends that an order of protection be sought shall assist the victim in the completion of the form petition for filing with the clerk

(3) No agency shall be required to provide this assistance unless it has been provided with the appropriate forms by the clerk.

36-3-618. Purpose - Legislative intent.

The purpose of this part is to recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse. A further purpose of this chapter is to recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers. Thus, the general assembly intends that the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated.

36-3-619. Officer response - Primary aggressor - Factors - Reports - Notice to victim of legal rights.

(a) If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, the officer shall exercise such officer's best judgment in determining whether to arrest all, any or none of the parties.

(c) To determine who is the primary aggressor, the officer shall consider:

(1) The history of domestic abuse between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) Evidence from the persons involved in the domestic abuse;

(4) The likelihood of future injury to each person;

(5) Whether one (1) of the persons acted in self-defense; and

(6) Evidence from witnesses of the domestic abuse.

(d) A law enforcement officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or

(2) Base the decision of whether to arrest on:

(A) The consent or request of the victim; or

(B) The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.

(e) When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled. If a law enforcement officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.

(f) Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

(g) When a law enforcement officer responds to a domestic abuse call, the officer shall:

(1) Offer to transport the victim to a place of safety, such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as practicable;

(2) Advise the victim of a shelter or other service in the community; and

(3) Give the victim notice of the legal rights available by giving the victim a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the following rights:
1. You may file a criminal complaint with the district attorney general (D.A.).
2. You may request a protection order. A protection order may include the following:
(A) An order preventing the abuser from committing further domestic abuse against you;
(B) An order requiring the abuser to leave your household;
(C) An order preventing the abuser from harassing you or contacting you for any reason;
(D) An order giving you or the other parent custody of or visitation with your minor child or children;
(E) An order requiring the abuser to pay money to support you and the minor children if the abuser has a legal obligation to do so; and
(F) An order preventing the abuser from stalking you.
The area crisis line is
The following domestic abuse shelter/programs are available to you:

(4) Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.

(h)

(1) For good cause shown, the court may issue an ex parte order of protection pursuant to § 36-3-605 upon a sworn petition filed by a law enforcement officer responding to an incident of domestic abuse who asserts in the petition reasonable grounds to believe that a person is in immediate and present danger of abuse, as defined in § 36-3-601, and that the person has consented to the filing in writing; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection shall be considered the petitioner for purposes of this part.

(2) The law enforcement officer may seek on behalf of the person the ex parte order regardless of the time of day and whether or not an arrest has been made.

(3) If an ex parte order is issued pursuant to this section outside of the issuing court's normal operating hours:

(A) The law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as practicable after issuance, but no later than two (2) business days after issuance; and

(B) The law enforcement officer shall use reasonable efforts to notify the person on whose behalf the petition was filed and provide the person with a copy of the ex parte order as soon as practicable after issuance.

(4) The court shall cause a copy of the petition, a notice of the date set for the hearing, and a copy of the ex parte order of protection to be served upon the respondent in accordance with § 36-3-605(c). A hearing on whether or not the ex parte order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the order on the respondent. The person who consented to the filing shall be given notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(5) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

36-3-620. Seizure of weapons in possession of alleged domestic abuser.

(a)

(1) If a law enforcement officer has probable cause to believe that a criminal offense involving domestic abuse against a victim, as defined in § 36-3-601, has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime.

(2) Incident to an arrest for a crime involving domestic abuse against a victim, as defined in § 36-3-601, a law enforcement officer may seize a weapon that is in plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons; provided, that a law enforcement officer is not required to remove a weapon such officer believes is needed by the victim for self defense.

(b) The provisions of § 39-17-1317, relative to the disposition of confiscated weapons, shall govern all weapons seized pursuant to this section that were used or threatened to be used by the abuser to commit the crime; provided, that if multiple weapons are seized, the court shall have the authority to confiscate only the weapon or weapons actually used or threatened to be used by the abuser to commit the crime. All other weapons seized shall be returned upon disposition of the case. Also, the officer shall append an inventory of all seized weapons to the domestic abuse report that the officer files with the officer's supervisor pursuant to § 36-3-619(e).

(c) The officer's supervisor shall include the appended information on seized weapons in the compilation of data that the officer's supervisor forwards to the administrative director of the court pursuant to § 36-3-619(f).

36-3-621. Wireless telephone service for victims of domestic violence

(a) A petitioner may, at the time of filing a petition for an order of protection, request that the court issue an order directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner:

(1) Is not the account holder; and

(2) Proves by a preponderance of the evidence that the petitioner and any minor children in the petitioner's care are the primary users of the wireless telephone numbers that will be ordered transferred by a court under this subsection (a).

(b)

(1) An order transferring the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner under subsection (a) must be a separate order that is directed to the wireless telephone service provider.

(2) The order must list:

(A) The name and billing telephone number of the account holder;

(B) The name and contact information of the petitioner to whom the telephone number or numbers will be transferred; and

(C) Each telephone number to be transferred to the petitioner.

(3) The court shall ensure that the petitioner's contact information is not provided to the account holder in proceedings held under this section.

(4) The order must be served on the wireless telephone service provider's agent for service of process.

(5) The wireless service provider shall notify the requesting party if the wireless telephone service provider cannot operationally or technically effectuate the order due to certain circumstances, including when:

(A) The account holder has already terminated the account;

(B) Differences in network technology prevent the functionality of a device on the network; or

(C) There are geographic or other limitations on network or service availability

(c)

(1) Upon a wireless telephone service provider's transfer of billing responsibility for and rights to a wireless telephone number or numbers to a petitioner under subsection (b), the petitioner shall assume:

(A) Financial responsibility for the transferred wireless telephone number or numbers;

(B) Monthly service costs; and

(C) Costs for any mobile device associated with the wireless telephone number or numbers.

(2) A transfer ordered under subsection (b) does not preclude a wireless telephone service provider from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers, including, but not limited to, identification, financial information, and customer preferences.

(d) This section does not affect the ability of the court to apportion the assets and debts of the parties as provided for in law, or the ability to determine the temporary use, possession, and control of personal property under this chapter.

(e) Notwithstanding any other law to the contrary, no cause of action shall lie in any court nor shall any civil, criminal, or administrative proceeding be commenced by a governmental entity against any wireless telephone service provider, or its directors, officers, employees, agents, or vendors, for:

(1) Action taken in compliance with an order issued under this section;

(2) A failure to process an order issued under this section, unless the failure is the result of gross negligence, which must be shown by clear and convincing evidence; or

(3) Providing in good faith call location information or other information, facilities, or assistance in accordance with subsection (a) or any rules promulgated under this section.

(f) If an order of protection is issued, but a separate order under § 36-3-606(a)(12) did not issue at the time of the order, or if the order of protection was issued prior to the availability of the relief under § 36-3-606(a)(12), a petitioner may, at any time, petition the court issuing the order of protection to modify the order and require a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner pursuant to this section.

36-3-622. Out-of-state protection orders.

(a) Any valid protection order related to abuse, domestic abuse, or domestic or family violence, issued by a court of another state, tribe or territory shall be afforded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(b)

(1) A protection order issued by a state, tribal or territorial court related to abuse, domestic abuse or domestic or family violence shall be deemed valid if the issuing court has jurisdiction over the parties and matter under the law of the issuing state, tribe or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

(2) For a foreign protection order to be valid in this state, the respondent must have been given reasonable notice and the opportunity to be heard before the order of the foreign state, tribe or territory was issued; provided, that in the case of ex parte orders, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process.

(3) Failure to provide reasonable notice and the opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

(c) A petitioner may present a certified copy of a foreign order of protection to a court having jurisdiction of orders of protection in the county in which the petitioner believes enforcement may be necessary. The clerk of such court shall receive the certified copies of any foreign order of protection and any supporting documents used to show the validity of such order and shall maintain such orders, along with any submitted documents. No costs, fees or taxes shall be charged by the clerks for this service. If an enforcement action is instituted in the court pursuant to any such order, the clerk shall file the order and shall otherwise treat the enforcement action as a case, except that all court costs, fees and litigation taxes shall be taxed by the judge at the adjudication of the enforcement action. It shall be a defense to any action taken for the enforcement of such order that the order is not valid as provided in subsection (b) or (d). No person shall present a foreign order of protection to a clerk that the person knows to no longer be in effect. A foreign order of protection shall continue in effect for the period of time specified in the order, and, if no time limitation is so specified, then the order shall continue in effect for a period of one (1) year from the date on which it is first presented to a Tennessee court pursuant to subsection (c); provided, that a continuation of any such order may be granted by the court subject to the requirements set forth in § 36-3-605.

(d) A protection order entered against both the petitioner and respondent shall not be enforceable against the petitioner in a foreign jurisdiction unless:

(1) The respondent filed a cross- or counter-petition, or a complaint or other written pleading was filed seeking such a protection order; and

(2) The issuing court made specific findings of domestic or family violence against the petitioner.

(e) The clerk shall be under no obligation to make a determination as to the validity of such orders or documentation, but shall forward a copy of the foreign protection order and any supporting documentation filed with the order to the local police or sheriff's office, as provided for in § 36-3-609.

(f) Upon request, the clerk shall provide a copy of the order to the person offering the same showing proof of receipt by the clerk's office.

(g) Regardless of whether a foreign order of protection has been filed in this state pursuant to this section, a law enforcement officer may rely upon a copy of any such protection order that has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action in connection with a court's finding that the foreign order was for any reason not enforceable.

36-3-623. Confidentiality of records of shelters, centers, providers.

(a) The records of domestic violence shelters, rape crisis centers, and human trafficking service providers shall be treated as confidential by the records custodian of such shelters, centers, or providers unless:

(1) The individual to whom the records pertain authorizes their release; or

(2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

(b) As used in this section, “human trafficking service providers” means agencies or groups that are incorporated as a not-for-profit organization for at least six (6) months, are tax-exempt under § 501 of the Internal Revenue Code (26 U.S.C. § 501), and that have provided services to victims of human trafficking.

36-3-624. Death review teams established - Protocol - Composition of teams - Disclosure of communications - Authority to subpoena.

(a) A county may establish an interagency domestic abuse death review team to assist local agencies in identifying and reviewing domestic abuse deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic abuse cases.

(b) For purposes of this section, "domestic abuse" has the meaning set forth in § 36-3-601.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic abuse victims in the identification of domestic abuse, in the determination of whether domestic abuse contributed to death or whether domestic abuse had occurred prior to death but was not the actual cause of death, and in the proper written reporting procedures for domestic abuse, including the designation of the cause and mode of death.

(d) County domestic abuse death review teams may be comprised of, but not limited to, the following:

(1) Experts in the field of forensic pathology;

(2) Medical personnel with expertise in domestic violence abuse;

(3) Coroners and medical examiners;

(4) Criminologists;

(5) District attorneys general and city attorneys;

(6) Domestic abuse shelter staff;

(7) Legal aid attorneys who represent victims of abuse;

(8) A representative of the local bar association;

(9) Law enforcement personnel;

(10) Representatives of local agencies that are involved with domestic abuse reporting;

(11) County health department staff who deal with domestic abuse victims' health issues;

(12) Representatives of local child abuse agencies; and

(13) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic abuse death review team related to a domestic abuse death is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic abuse death review team is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic abuse death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of a domestic abuse death review team.

(f) To complete a review of a domestic abuse death, whether confirmed or suspected, each domestic abuse death review team shall have access to and subpoena power to obtain all records of any nature maintained by any public or private entity which pertain to a death being investigated by the team. Such records include, but are not limited to, police investigations and reports, medical examiner investigative data and reports, and social service agency reports, as well as medical records maintained by a private health care provider or health care agency. Any entity or individual providing such information to the local team shall not be held liable for providing the information.

36-3-625. Dispossession of firearms.

(a) Upon issuance of an order of protection that fully complies with 18 U.S.C. § 922(g)(8), the order shall include on its face the following disclosures:

(1) That the respondent is required to dispossess the respondent by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms the respondent possesses within forty-eight (48) hours of the issuance of the order;

(2) That the respondent is prohibited from possessing a firearm for so long as the order of protection or any successive order of protection is in effect, and may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect; and

(3) Notice of the penalty for any violation of this section and § 39-17-1307(e).

(b) The court shall then order and instruct the respondent:

(1) To terminate the respondent's physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours;

(2) To complete and return the affidavit of firearm dispossession form created pursuant to subsection (e), which the court may provide the respondent or direct the respondent to the administrative office of the courts' web site; and

(3) That if the respondent possesses firearms as business inventory or that are registered under the National Firearms Act, compiled in 26 U.S.C. §§ 5801 et seq., there are additional statutory provisions that may apply and shall include these additional provisions in the content of the order.

(c) Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

(d) When the respondent is lawfully dispossessed of firearms as required by this section, the respondent shall complete an affidavit of firearms dispossession form created pursuant to subsection (e) and return it to the court issuing the order of protection.

(e) The affidavit of firearms dispossession form shall be developed by the domestic violence state coordinating council, in consultation with the administrative office of the courts. Upon completion, the form shall be posted on the web site of the administrative office of the courts where it can be copied by respondents or provided to them by the court or the court clerk.

(f) In determining what a lawful means of dispossession is:

(1) If the dispossession, including, but not limited to, the transfer of weapons registered under the National Firearms Act, compiled in 26 U.S.C. §§ 5801 et seq., that requires the approval of any state or federal agency prior to the transfer of the firearm, the respondent may comply with the dispossession requirement by having the firearm or firearms placed into a safe or similar container that is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(2) If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives. The order of protection shall not require the surrender or transfer of the inventory if there are one (1) or more individuals who are responsible parties under the federal license who are not the respondent subject to the order of protection.

(g) A firearm subject to this section shall not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to the entry of the order of protection constituted an independent crime of which the respondent has been convicted or the firearms are abandoned by the respondent.

(h)

(1) It is an offense for a person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8) to knowingly fail to surrender or transfer all firearms the respondent possesses as required by this section.

(2) A violation of subdivision (h)(1) is a Class A misdemeanor and each violation shall constitute a separate offense.

(3) If the violation of subdivision (h)(1) also constitutes a violation of § 39-13-113(h) or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

36-3-626. Authorization to carry handgun after order of protection granted and while application for temporary handgun permit pending.

(a) A person who petitions the court and is granted an order of protection, ex parte or otherwise, pursuant to this part is authorized to, for twenty-one (21) calendar days after that order of protection is granted, carry any handgun, as defined in § 39-17-1319, that the person legally owns or possesses so long as the person has in the person's possession at all times while carrying the handgun a copy of the order of protection.

(b) A person who does not apply for a temporary handgun carry permit under § 39-17-1365 within the time period set forth in § 39-17-1365(a) shall not be authorized to carry a handgun under subsection (a) once that time period has expired.

(c) A person who has applied for a temporary handgun carry permit under § 39-17-1365 may continue to carry a handgun after the time period in this subsection (a) has expired while that application is pending, so long as the person has in the person's possession at all times while carrying the handgun both a copy of the temporary handgun carry permit application receipt as provided by the department and a copy of the order of protection.

38-1-101. Reports to law enforcement officials of certain types of injuries – Immunity for reporting – Exceptions.

(a)

(1) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid to persons suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation, or where a wound or injury is reasonably believed to have resulted from exposure to a methamphetamine laboratory or a methamphetamine related fire, explosion, or chemical release, or appears to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110, shall report the same immediately to the chief of police, if the injured person is in or brought into or the injury occurred in an incorporated town or city, or to the sheriff if the injured person is in or brought into or the injury occurred in the county outside the corporate limits of any incorporated town or city, and shall also, in either event, report the same immediately to the district attorney general or a member of the district attorney general's staff of the judicial district in which the injured person is, or has been brought into, or the injury occurred. Such report shall state the name, residence, and employer of such person, if known, such person's whereabouts at the time the report is made, the place the injury occurred, and the character and extent of such injuries.

(2) No later than January 15 of each year, district attorneys general shall report the number of reports of a person who appeared to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110 received pursuant to subdivision (a)(1) to the senate judiciary committee and the judiciary committee of the house of representatives.

(b) Injuries to minors that are required to be reported by § 37-1-403 are not required to be reported under this section.

(c)

(1) Where a person acts in good faith in making a report under subsection (a), that person shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity.

(2) There exists a rebuttable presumption that a person making a report under subsection (a) is doing so in good faith.

(d) For purposes of this part, "person" means any individual, firm, partnership, co-partnership, association, corporation, governmental subdivision or agency, or other organization or other legal entity, or any agent, servant, or combination of persons thereof.

(e)

(1) The reporting provisions in subsection (a) do not apply if the person seeking or receiving treatment:

(A) Is 18 years of age or older;

(B) Objects to the release of any identifying information to law enforcement officials; and

(C) Is a victim of a sexual assault offense or domestic abuse as defined in § 36-3-601.

(2) This exception shall not apply and the injuries shall be reported as provided in subsection (a) if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon.

(3) A hospital, healthcare provider or other person who is required to report under subsection (a) shall be immune from civil liability for not reporting if in good faith the hospital, healthcare provider or other person does not report the injury in order to comply with this subsection (e).

(4) If a person injured as provided in subsection (a) is first treated by an EMT, EMT-P, emergency medical or rescue worker, firefighter or other first responder, it shall not be the duty of the first responder to determine if the patient comes within the provisions of subdivision (e)(1). If the first responder transports the patient to a healthcare facility, the first responder's duty is to notify the treating physician or emergency room staff at the facility of the suspected cause of the patient's injury. If the patient is not transported to a healthcare facility, the first responder shall report the result of the call to the 911 center.

38-6-109. Verification of criminal violation information.

(a) he Tennessee bureau of investigation shall process requests for criminal background checks from any authorized persons, organizations or entities permitted by law to seek criminal history background checks on certain persons, pursuant to a format and under procedures as it may require.

(b)

(1) At the request of any persons, organizations or entities authorized by law to make fingerprint requests, the Tennessee bureau of investigation shall receive fingerprint samples from the persons, organizations or entities permitted by law to make those requests and shall check the prints against its records by using its computer files of criminal offenders contained in the Tennessee crime information center (T.C.I.C.) to process these requests and, to the extent permitted by federal law, shall also check the prints against records maintained by the federal bureau of investigation to determine if prior criminal history or convictions exist.

(2) Upon completion of the search, the bureau shall report its findings to the requesting persons, organizations or entities authorized by law to receive such information.

(c)

(1) Agencies or organizations that have an agreement to do so with the Tennessee bureau of investigation and that have any responsibility or authority under law for conducting criminal history background reviews of persons may also access directly the computer files of the T.C.I.C. using only names or other identifying data elements to obtain available Tennessee criminal history background information for purpose of background reviews.

(2) If review by the method permitted by subdivision (c)(1) indicates the need for further verification of the individual's criminal history, and if authorized by the requesting entity's legal authority, the requesting entity may submit fingerprint samples for a criminal history background check by the Tennessee bureau of investigation as otherwise authorized by this section.

(d) The fees for fingerprint searches shall be the same for a Tennessee search as for a federal bureau of investigation search and shall be according to the fee schedule established by the federal bureau of investigation.

(e) The instant check unit of the Tennessee bureau of investigation shall contact the agency making the entry of an order of protection into the national crime information center within one (1) day if the subject of the order of protection attempts to purchase a firearm.

(f) If a person who has been adjudicated as a mental defective or judicially committed to a mental institution attempts to purchase a firearm, and the instant check unit of the Tennessee bureau of investigation confirms the person's record by means of a record indicating the person's name, birth date, social security number, and either the person's sex or race, the unit shall contact, within twenty-four (24) hours, the chief law enforcement officer of the jurisdiction where the attempted purchase occurred for the purpose of initiating an investigation into a possible violation of law.

39-15-501 Part definitions. [Effective on January 1, 2020. See the version effective until January 1, 2020.]

As used in this part, unless the context otherwise requires:

(1) "Abandonment" means the knowing desertion or forsaking of an elderly or vulnerable adult by a caregiver under circumstances in which there is a reasonable likelihood that physical harm could occur;

(2) "Abuse" means the infliction of physical harm;

(3) "Adult protective services" means the division of adult protective services of the department of human services;

(4) "Caregiver":

(A) Means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for an elderly or vulnerable adult's care; and

(B) Does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult;

(5) "Confinement":

(A) Means the knowing and unreasonable restriction of movement of an elderly or vulnerable adult by a caregiver;

(B) Includes, but is not limited to:

(i) Placing a person in a locked room;

(ii) Involuntarily separating a person from the person's living area;

(iii) The use of physical restraining devices on a person; or

(iv) The provision of unnecessary or excessive medications to a person; and

(C) Does not include the use of the methods or devices described in subdivision (5)(B) if used in a licensed facility in a manner that conforms to state and federal standards governing confinement and restraint;

(6) "Elderly adult" means a person seventy (70) years of age or older;

(7) "Financial exploitation" means:

(A) The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly or vulnerable adult's property with the intent to deprive the elderly or vulnerable adult of property;

(B) The breach of a fiduciary duty to an elderly or vulnerable adult by the person's guardian, conservator, or agent under a power of attorney which results in an appropriation, sale, or transfer of the elderly or vulnerable adult's property; or

(C) The act of obtaining or exercising control over an elderly or vulnerable adult's property, without receiving the elderly or vulnerable adult's effective consent, by a caregiver committed with the intent to benefit the caregiver or other third party;

(8)

(A) "Neglect" means:

(i) The failure of a caregiver to provide the care, supervision, or services necessary to maintain the physical health of an elderly or vulnerable adult, including, but not limited to, the provision of food, water, clothing, medicine, shelter, medical services, a medical treatment plan prescribed by a healthcare professional, basic hygiene, or supervision that a reasonable person would consider essential for the weIl-being of an elderly or vulnerable adult;

(ii) The failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse, sexual exploitation, neglect, or financial exploitation by others;

(iii) Abandonment; or

(iv) Confinement; and

(B) Neglect can be the result of repeated conduct or a single incident;

(9) "Physical harm" means physical pain or injury, regardless of gravity or duration;

(10) "Relative" means a spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who:

(A) Resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and

(B) Knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources;

(11) "Serious physical harm" means physical harm of such gravity that:

(A) Would normally require medical treatment or hospitalization;

(B) Involves acute pain of such duration that it results in substantial suffering;

(C) Involves any degree of prolonged pain or suffering; or

(D) Involves any degree of prolonged incapacity;

(12) "Serious psychological injury" means any mental harm that would normally require extended medical treatment, including hospitalization or institutionalization, or mental harm involving any degree of prolonged incapacity;

(13) "Sexual exploitation" means an act committed upon or in the presence of an elderly or vulnerable adult, without that adult's effective consent, for purposes of sexual gratification. "Sexual exploitation" includes, but is not limited to, fondling; exposure of genitals to an elderly or vulnerable adult; exposure of sexual acts to an elderly or vulnerable adult; exposure of an elderly or vulnerable adult's sexual organs; an intentional act or statement by a person intended to shame, degrade, humiliate, or otherwise harm the personal dignity of an elderly or vulnerable adult; or an act or statement by a person who knew or should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of an elderly or vulnerable adult. "Sexual exploitation" does not include any act intended for a valid medical purpose, or any act reasonably intended to be a normal caregiving act, such as bathing by appropriate persons at appropriate times; and

(14) "Vulnerable adult" means a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.

39-15-502. Offense of financial exploitation of elderly or vulnerable person.

(a) It is an offense for any person to knowingly financially exploit an elderly or vulnerable adult.

(b) A violation of this section shall be punished as theft pursuant to § 39-14-105; provided, however, that the violation shall be punished one (1) classification higher than is otherwise provided in § 39-14-105.

(c)

(1) If a person is charged with financial exploitation that involves the taking or loss of property valued at more than five thousand dollars ($5,000), a prosecuting attorney may file a petition with the circuit, general sessions, or chancery court of the county in which the defendant has been charged to freeze the funds, assets, or property of the defendant in an amount up to one hundred percent (100%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The hearing on the petition may be held ex parte if necessary to prevent additional exploitation of the victim.

(2) Upon a showing of probable cause in the ex parte hearing, the court shall issue an order to freeze or seize the funds, assets, or property of the defendant in the amount calculated pursuant to subdivision (c)(1). A copy of the freeze or seize order shall be served upon the defendant whose funds, assets, or property has been frozen or seized.

(3) The court's order shall prohibit the sale, gifting, transfer, or wasting of the funds, assets, or property of the elderly or vulnerable adult, both real and personal, owned by, or vested in, such person, without the express permission of the court.

(4) At any time within thirty (30) days after service of the order to freeze or seize funds, assets, or property, the defendant or any person claiming an interest in the funds, assets, or property may file a motion to release the funds, assets, or property. The court shall hold a hearing on the motion no later than ten (10) days from the date the motion is filed.

(d) In any proceeding to release funds, assets, or property, the state has the burden of proof, by a preponderance of the evidence, to show that the defendant used, was using, is about to use, or is intending to use any funds, assets, or property in any way that constitutes or would constitute an offense under subsection (a). If the court finds that any funds, assets, or property were being used, are about to be used, or are intended to be used in any way that constitutes or would constitute an offense under subsection (a), the court shall order the funds, assets, or property frozen or held until further order of the court.

(e) If the prosecution of a charge under subsection (a) is dismissed or a nolle prosequi is entered, or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the funds, assets, or property.

(f) In addition to other remedies provided by law, an elderly or vulnerable adult in that person's own right, or by conservator or next friend, has a right of recovery in a civil action for financial exploitation or for theft of the person's money or property whether by fraud, deceit, coercion, or otherwise. The right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly or vulnerable adult, but passes as provided in § 20-5-106, unless the alleged wrongdoer is a relative, in which case the cause of action passes to the victim's personal representative.

39-15-503. Permissive inferences.

For purposes of determining whether an offense was committed under § 39-15-502:

(1) Any transfer of property valued in excess of one thousand dollars ($1,000) in a twelve-month period, whether in a single transaction or multiple transactions, by an elderly or vulnerable adult to a nonrelative whom the transferor has known for fewer than two (2) years before the first transfer and for which the transferor did not receive reciprocal value in goods or services creates a permissive inference that the transfer was effectuated without the effective consent of the owner.

(2) Subdivision (1) applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan except that it shall not apply to a valid loan evidenced in writing and which includes definite repayment dates. In the event repayment of any such loan is in default, in whole or in part, for more than sixty (60) days, the inference described in subdivision (1) applies. Subdivision (1) does not apply to persons or entities that operate a legitimate financial institution.

(3) This section does not apply to valid charitable donations to nonprofit organizations qualifying for tax exempt status under the internal revenue code.

(4) A court shall instruct jurors that they may, but are not required to, infer that the transfer of money or property was effectuated without the effective consent of the owner, with the intent to deprive the owner of the money or property, upon proof beyond a reasonable doubt of the facts listed in subdivision (1). The court shall also instruct jurors that they may find a defendant guilty only if persuaded that each element of the offense has been proved beyond a reasonable doubt.

39-15-504. Hearing to preserve testimony of victim.

In cases where an alleged offense under this part or under title 71, chapter 6, part 1 has been committed against an elderly or vulnerable adult, upon the state's motion, the court shall conduct a hearing to preserve the testimony of the victim within sixty (60) days of the defendant's initial court appearance whether the case originates in general sessions court or criminal court.

39-15-505. Victim's inability to attend judicial proceedings -- Affidavit -- Out-of-court deposition.

(a) An elderly or vulnerable adult victim's inability to attend judicial proceedings due to illness, or other mental or physical disability, shall be considered exceptional circumstances upon the state's motion to preserve testimony pursuant to Rule 15 of the Tennessee Rules of Criminal Procedure.

(b) The court shall consider an affidavit executed by the elderly or vulnerable adult's treating physician stating that the elderly or vulnerable adult is unable to attend court due to illness or other mental or physical disability as prima facie evidence of the need to preserve witness testimony by the taking of the adult's out-of-court deposition.

(c) The court shall order the defendant's attendance to the out-of-court deposition. The defendant may waive the defendant's attendance in writing.

39-15-506. Placement on registry -- Fine. [Effective on January 1, 2020. See the version effective until January 1, 2020.]

(a)

(1) Following a conviction for a violation of § 39-15-502, § 39-15-507(b)-(c), § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, or at the discretion of the court for a conviction of § 39-15-507(d), the clerk of the court shall notify the department of health of the conviction by sending a copy of the judgment in the manner set forth in § 68-11-1003 for inclusion on the registry pursuant to title 68, chapter 11, part 10.

(2) Upon receipt of a judgment of conviction for a violation of an offense set out in subdivision (a)(1), the department shall place the person or persons convicted on the registry of persons who have abused, neglected, or financially exploited an elderly or vulnerable adult as provided in § 68-11-1003(c).

(3) Upon entry of the information in the registry, the department shall notify the person convicted, at the person's last known mailing address, of the person's inclusion on the registry. The person convicted shall not be entitled or given the opportunity to contest or dispute either the prior hearing conclusions or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which the conclusions and determinations are based. The person convicted may challenge the accuracy of the report that the criminal disposition has occurred, such hearing conclusions were made, or any factual issue related to the correct identity of the person. If the person convicted makes such a challenge within sixty (60) days of notification of inclusion on the registry, the commissioner, or the commissioner's designee, shall afford the person an opportunity for a hearing on the matter that complies with the requirements of due process and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)

(1) In addition to any other punishment that may be imposed for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, the court shall impose a fine of not less than five hundred dollars ($500) for Class A or Class B misdemeanor convictions, and a fine of not less than one thousand dollars ($1,000) for felony convictions. The fine shall not exceed the maximum fine established for the appropriate offense classification.

(2) The person convicted shall pay the fine to the clerk of the court imposing the sentence, who shall transfer it to the district attorney of the judicial district in which the case was prosecuted. The district attorney shall credit the fine to a fund established for the purpose of educating, enforcing, and providing victim services for elderly and vulnerable adult prosecutions.

39-15-507. Offense of neglect of elderly adult -- Offense of neglect of vulnerable adult. [Effective on January 1, 2020. See the version effective until January 1, 2020.]

(a) It is an offense for a caregiver to knowingly neglect an elderly or vulnerable adult, so as to adversely affect the person's health or welfare.

(b) The offense of neglect of an elderly adult is a Class E felony.

(c) The offense of neglect of a vulnerable adult is a Class D felony.

(d) If the neglect is a result of abandonment or confinement and no injury occurred, then the neglect by abandonment or confinement of an elderly or vulnerable adult is a Class A misdemeanor.

39-15-508. Offense of aggravated neglect of elderly or vulnerable adult.

(a) A caregiver commits the offense of aggravated neglect of an elderly or vulnerable adult who commits neglect pursuant to § 39-15-507, and the act:

(1) Results in serious physical harm; or

(2) Results in serious bodily injury.

(b) In order to convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by § 39-13-102, but only that the neglect resulted in serious physical harm.

(c) A violation of subdivision (a)(1) is a Class C felony.

(d) A violation of subdivision (a)(2) is a Class B felony.

39-15-509. Report of abuse, sexual exploitation, neglect, or financial exploitation to adult protective services -- Report of rape or sexual battery to adult protective services and law enforcement agency -- Failure to make report. [Effective on January 1, 2020. See the version effective until January 1, 2020.]

(a)

(1) Any person having reasonable suspicion that an elderly or vulnerable adult is suffering or has suffered abuse, sexual exploitation, neglect, or financial exploitation shall report such neglect or financial exploitation to adult protective services pursuant to title 71, chapter 6.

(2) Any person having reasonable suspicion that an elderly or vulnerable adult is the victim of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, aggravated sexual battery pursuant to § 39-13-504, or sexual battery pursuant to § 39-13-505, shall report the conduct to adult protective services pursuant to title 71, chapter 6, and to the local law enforcement agency in the jurisdiction where the offense occurred.

(b) Any person who fails to make reasonable efforts to make a report required by subsection (a) or by title 71, chapter 6, commits a Class A misdemeanor.

(c) Upon good cause shown, adult protective services shall cooperate with law enforcement to identify those persons who knowingly fail to report abuse, sexual exploitation, neglect, or financial exploitation of an elderly or vulnerable adult.

(d)

(1) This section does not apply to a financial service provider or to an employee of a financial service provider acting within the scope of the employee's employment except as provided by title 45, chapter 2, part 12.

(2) As used in subdivision (d)(1), "financial service provider" means any of the following engaged in or transacting business in this state:

(A) A state or national bank or trust company;

(B) A state or federal savings and loan association;

(C) A state or federal credit union;

(D) An industrial loan and thrift company, regulated by title 45, chapter 5;

(E) A money transmitter, regulated by title 45, chapter 7, part 2;

(F) A check casher, regulated by title 45, chapter 18;

(G) A mortgage loan lender, mortgage loan broker, mortgage loan originator, or mortgage loan servicer, regulated by title 45, chapter 13;

(H) A title pledge lender, regulated by title 45, chapter 15;

(I) A deferred presentment services provider, regulated by title 45, chapter 17;

(J) A flex loan provider, regulated by title 45, chapter 12; or

(K) A home equity conversion mortgage lender, regulated by title 47, chapter 30.

(e) Upon commencement of criminal prosecution of abuse, sexual exploitation, neglect, or financial exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general a complete and unredacted copy of adult protective services' entire investigative file excluding the identity of the referral source except as provided by subsection (f).

(f) Upon return of a criminal indictment or presentment alleging abuse, sexual exploitation, neglect, or financial exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general the identity of the person who made the report in accordance with § 71-6-118.

39-15-510. Offense of abuse of elderly or vulnerable adult. [Effective on January 1, 2020.]

(a) It is an offense for a person to knowingly abuse an elderly or vulnerable adult.

(b) The offense of abuse of an elderly adult is a Class E felony.

(c) The offense of abuse of a vulnerable adult is a Class D felony.

39-15-511. Offense of aggravated abuse of elderly or vulnerable adult. [Effective on January 1, 2020.]

(a) A person commits the offense of aggravated abuse of an elderly or vulnerable adult who knowingly commits abuse pursuant to § 39-15-510, and:

(1) The act results in serious psychological injury or serious physical harm;

(2) A deadly weapon is used to accomplish the act or the abuse involves strangulation as defined in § 39-13-102; or

(3) The abuse results in serious bodily injury.

(b) A violation of subdivision (a)(1) is a Class C felony.

(c) A violation of subdivision (a)(2) or (a)(3) is a Class B felony.

39-15-512. Offense of sexual exploitation of elderly adult or vulnerable adult. [Effective on January 1, 2020.]

(a) It is an offense for any person to knowingly sexually exploit an elderly adult or vulnerable adult.

(b) A violation of this section is a Class A misdemeanor.

39-15-513. Obtaining information concerning medical condition or health of elderly adult -- Sending unsolicited or specifically refused medical items -- Filing claim or submitting bill with state medicaid plan.

(a) A person or an entity commits an offense if the person or entity knowingly:

(1) Uses a telephone or other communication or electronic device to obtain information concerning the medical condition or health of an elderly adult;

(2) Sends, or causes to be sent, medical supplies, medical equipment, or medicine to the elderly adult and the items sent are unsolicited or specifically refused; and

(3) Files a claim or submits a bill with the state medicaid plan for reimbursement of the value of the equipment, supplies, or medicine sent to the elderly adult.

(b) Any person who violates this section shall be punished as provided in § 71-5-2601(a)(4).

II. Child Custody

36-1-113. Termination of parental or guardianship rights

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4. All pleadings and records filed in the chancery and circuit courts pursuant to this section shall be placed under seal and shall not be subject to public disclosure, in the same manner as those filed in juvenile court, unless otherwise provided by court order.

(b)

(1) The prospective adoptive parent or parents, including extended family members caring for a related child, any licensed child-placing agency having physical custody of the child, the child's guardian ad litem, or the department shall have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The child's parent, pursuant to subdivision (g)(10), (g)(11), or (g)(15), shall also have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The prospective adoptive parents, including extended family members caring for a related child, shall have standing to request termination of parental or guardianship rights in the adoption petition filed by them pursuant to this part.

(2) The court shall notify the petitioning parent that the duty of future child support by the parent who is the subject of the termination petition will be forever terminated by entry of an order terminating parental rights.

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

(d)

(1) The petition to terminate parental rights may be made upon information and belief and shall be verified. If a parent whose parental rights are proposed for termination is the legal parent of the child, as defined in § 36-1-102, and if such parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death of such parent. Upon proof satisfactory to the court that such parent is deceased, no further action shall be required to terminate parental rights of that person.

(2)

(A) The petition to terminate parental rights shall state:

(i) The child's birth name;

(ii) The child's age or date of birth;

(iii) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency;

(iv) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court;

(v) Any notice required pursuant to subdivision (d)(4) has been given; and

(vi) The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Initials or pseudonyms may be used in the petition in lieu of the full names of the petitioners to promote the safety of the petitioners or of the child, with permission of the court;

(3)

(A) The petition to terminate parental rights must state that:

(i) The Tennessee putative father registry has been consulted prior to the filing of the petition or will be consulted within ten (10) days thereafter unless the biological father has been identified through DNA testing as described in § 24-7-112 and that identification is set out in the petition; and a copy of the response to this inquiry shall be provided to the court immediately upon receipt by the petitioner; and

(ii) Notice of the filing of the termination petition has been provided to the Tennessee putative father registry if the child is less than thirty (30) days old at the time the petition is filed.

(B) [Deleted by 2019 amendment.]

(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition, if granted, shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;

(ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and

(iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child, except as provided by contract pursuant to § 36-1-145

(4) The petition to terminate parental rights, if filed separately from the adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

(f) Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time of an action or proceeding is initiated, it must be affirmatively shown to the court that such incarcerated parent or guardian received actual notice of the following:

(1) The time and place of the hearing to terminate parental rights;

(2) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(3) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the circumstances;

(4) That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian:

(A) If indigent, will be provided with a court-appointed attorney to assist the parent or guardian in contesting the allegation; and

(B) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and

(5) If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving notice of such rights, the court may proceed with such action without the parent's or guardian's participation.

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to title 37, chapter 2, part 4;

(3)

(A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:

(i) The conditions that led to the child's removal still persist, preventing the child's safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child's safe return to the care of the parent or guardian;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard;

(4) The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against a child that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

(7) The parent has been:

(A) Convicted of first degree or second degree murder of the child's other parent or legal guardian; or

(B) Found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;

(8)

(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

(9)

(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, or if no such petition is filed, at the time of the filing of a petition to adopt a child, is the putative father of the child may also be terminated based upon any one (1) or more of the following additional grounds:

(i) [Deleted by 2019 amendment.]

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102;

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

(B)

(i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time

after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father, or possible biological father, of the biological mother's child;

(10)

(A) The parent has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime the child was conceived. A certified copy of the conviction suffices to prove this ground;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(10)(A), the child's other parent shall have standing to file a petition to terminate the parental rights of the convicted parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(10) or subdivision (g)(11) or (g)(15);

(11)

(A)

(i) The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court;

(ii) For the purposes of this section, "severe child sexual abuse" means the parent is convicted of any of the following offenses towards a child:

(a) Aggravated rape, pursuant to § 39-13-502;

(b) Aggravated sexual battery, pursuant to § 39-13-504;

(c) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;

(d) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(e) Incest, pursuant to § 39-15-302;

(f) Rape, pursuant to § 39-13-503; or

(g) Rape of a child, pursuant to § 39-13-522;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(11)(A)(ii), the child's other parent shall have standing to file a petition to terminate the parental rights of the abusive parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in subdivision (g)(10), this subdivision (g)(11), or subdivision (g)(15);

(12) The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309;

(13) The parent or guardian has been convicted on or after July 1, 2015, of sex trafficking of children or by force, fraud, or coercion under 18 U.S.C. § 1591, or a sex trafficking of children offense under the laws of another state that is substantially similar to § 39-13-309;

(14) A parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; and

(15)

(A) The parent or legal guardian has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian;

(B) When one (1) of the child's parents or legal guardians has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian, the child's non-offending parent or legal guardian shall have standing to file a petition to terminate the parental or guardianship rights of the convicted parent or legal guardian. Nothing in this section shall give a parent or legal guardian standing to file a petition to terminate parental or guardianship rights based on grounds other than those listed in subdivision (g)(10) or (g)(11) or this subdivision (g)(15).

(h)

(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) In the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) If a court of competent jurisdiction has determined a child to be an abandoned infant as defined at § 36-1-102; or

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of a child, committed voluntary manslaughter of a child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of a child, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to a child. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

(A) The child is being cared for by a relative;

(B) The department has documented in the permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(C) The department has not made reasonable efforts under § 37-1-166 to provide to the family of the child, consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

(j) In the hearing on the petition, the circuit, chancery, or juvenile court shall admit evidence, pursuant to the Tennessee Rules of Evidence, and shall recognize the exemptions to privileges as provided pursuant to §§ 37-1-411 and 37-1-614.

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. If such a case has not been completed within six (6) months from the date the petition was served, the petitioner or respondent shall have grounds to request that the court of appeals grant an order expediting the case at the trial level.

(l)

(1) An order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted; provided, that the entry of an order terminating the parental rights shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the entry of the order terminating parental rights.

(2) Notwithstanding subdivision (*l*)(1), a child who is the subject of the order for termination shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered.

(m) Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship of the child to a licensed child-placing agency or the department. Such guardianship shall include the right to place the child for adoption and the right to consent to the child's adoption. Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship to any prospective adoptive parent or parents with the right to adopt the child, or to any permanent guardian who has been appointed pursuant to title 37, chapter 1, part 8. In any of these cases, such guardianship is subject to the remaining rights, if any, of any other parent or guardian of the child. Before guardianship or partial guardianship can be awarded to a permanent guardian, the court shall find that the department or licensed child-placing agency currently having custody of the child has made reasonable efforts to place the child for adoption and that permanent guardianship is in the best interest of the child.

(n) An order of guardianship or partial guardianship entered by the court pursuant to this section shall supersede prior orders of custody or guardianship of that court and of other courts, except those prior orders of guardianship or partial guardianship of other courts entered as the result of validly executed surrenders or revocations pursuant to § 36-1-111 or § 36-1-112, or except as provided pursuant to § 36-1-111(r)(4)(D) and (E), or except an order of guardianship or partial guardianship of a court entered pursuant to § 36-1-116; provided, that orders terminating parental rights entered by a court under this section prior to the filing of an adoption petition shall be effective to terminate parental rights for all purposes.

(o) If the court terminates parental or guardianship rights, under this part or title 37 or a consent is given pursuant to § 36-1-117(f) or (g), or if there have been surrenders of parental or guardianship rights of all other necessary parties, then no further surrender or consent of that parent or guardian shall be necessary to authorize an adoption; provided, that the adoption court may review and confirm the validity of any denials of parentage made by persons under any statutory provisions from outside the state of Tennessee.

(p) A copy of the order or orders obtained by the prospective adoptive parents terminating parental or guardianship rights under this section shall be filed with the petition for adoption.

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

36-4-101. Grounds for divorce from bonds of matrimony.

(a) The following are causes of divorce from the bonds of matrimony:

(1) Either party, at the time of the contract, was and still is naturally impotent and incapable of procreation;

(2) Either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting;

(3) Either party has committed adultery;

(4) Willful or malicious desertion or absence of either party, without a reasonable cause, for one (1) whole year;

(5) Being convicted of any crime that, by the laws of the state, renders the party infamous;

(6) Being convicted of a crime that, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary;

(7) Either party has attempted the life of the other, by poison or any other means showing malice;

(8) Refusal, on the part of a spouse, to remove with that person's spouse to this state, without a reasonable cause, and being willfully absent from the spouse residing in Tennessee for two (2) years;

(9) The woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband;

(10) Habitual drunkenness or abuse of narcotic drugs of either party, when the spouse has contracted either such habit after marriage;

(11) The husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper, which may also be referred to in pleadings as inappropriate marital conduct;

(12) The husband or wife has offered such indignities to the spouse's person as to render the spouse's position intolerable, and thereby forced the spouse to withdraw;

(13) The husband or wife has abandoned the spouse or turned the spouse out of doors for no just cause, and has refused or neglected to provide for the spouse while having the ability to so provide;

(14) Irreconcilable differences between the parties; and

(15) For a continuous period of two (2) or more years that commenced prior to or after April 18, 1985, both parties have lived in separate residences, have not cohabited as man and wife during such period, and there are no minor children of the parties.

(b) A complaint or petition for divorce on any ground for divorce listed in this section must have been on file for sixty (60) days before being heard if the parties have no unmarried child under eighteen (18) years of age, and must have been on file at least ninety (90) days before being heard if the parties have an unmarried child under eighteen (18) years of age. The sixty-day or ninety-day period shall commence on the date the complaint or petition is filed.

36-4-121. Distribution of marital property.

(a)

(1) In all actions for divorce or legal separation, the court having jurisdiction thereof may, upon request of either party, and prior to any determination as to whether it is appropriate to order the support and maintenance of one (1) party by the other, equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just.

(2) In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

(3)

(A) Any auction sale of property ordered pursuant to this section shall be conducted in accordance with title 35, chapter 5.

(B) To this end, the court shall be empowered to effectuate its decree by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties.

(C) The court may order title 35, chapter 5 to apply to any sale ordered by the court pursuant to this section.

(D) The court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that such property is sold for its fair market value.

(b) For purposes of this chapter:

(1)

(A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property;

(B)

(i) "Marital property" includes income from, and any increase in the value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation;

(ii) "Marital property" includes the value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefit rights accrued as a result of employment during the marriage;

(iii) The account balance, accrued benefit, or other value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefits accrued as a result of employment prior to the marriage, together with the appreciation of the value, shall be "separate property." In determining appreciation for purposes of this subdivision (b)(1)(B)(iii), the court shall utilize any reasonable method of accounting to attribute postmarital appreciation to the value of the premarital benefits, even though contributions have been made to the account or accounts during the marriage, and even though the contributions have appreciated in value during the marriage; provided, however, the contributions made during the marriage, if made as a result of employment during the marriage and the appreciation attributable to these contributions, would be "marital property." When determining appreciation pursuant to this subdivision (b)(1)(B)(iii), the concepts of commingling and transmutation shall not apply;

(iv) Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire separate assets of the employee spouse shall be deemed to have come from the separate portion of the account, up to the total of the separate portion. Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire marital assets shall be deemed to have come from the marital portion of the account, up to the total of the marital portion;

(C) "Marital property" includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property;

(D) As used in this subsection (b), "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine;

(E) Property shall be considered marital property as defined by this subsection (b) for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division;

(2) "Separate property" means:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986 (26 U.S.C.), as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5)

(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of

marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;

(11) The amount of social security benefits available to each spouse; and

(12) Such other factors as are necessary to consider the equities between the parties.

(d) The court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to a spouse having physical custody of a child or children of the marriage.

(e)

(1) The court may impose a lien upon the marital real property assigned to a party, or upon such party's separate real property, or both, as security for the payment of child support.

(2) The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support or payment pursuant to property division.

(f)

(1) If, in making equitable distribution of marital property, the court determines that the distribution of an interest in a business, corporation or profession would be contrary to law, the court may make a distributive award of money or other property in order to achieve equity between the parties. The court, in its discretion, may also make a distributive award of money or other property to supplement, facilitate or effectuate a distribution of marital property.

(2) The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(g)

(1) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties regarding the division of property.

(2) Nothing in this section shall affect validity of an antenuptial agreement that is enforceable under § 36-3-501.

(h) If an order of protection issued in or recognized by this state has been in effect or there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce, the court shall attribute any debt owed for any batterers' intervention or rehabilitation programs to the abuser only.

36-4-130. Mediation - Confidentiality of information and documents.

(a) When the parties to a divorce action mediate the dispute, the mediator shall not divulge information disclosed to the mediator by the parties or by others in the course of mediation. All records, reports, and other documents developed for the mediation are confidential and privileged.

(b) Communications made during a mediation may be disclosed only:

(1) When all parties to the mediation agree, in writing, to waive the confidentiality of the written information;

(2) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation;

(3) When statements, memoranda, materials and other tangible evidence are otherwise subject to discovery and were not prepared specifically for use in and actually used in the mediation;

(4) When the parties to the mediation are engaged in litigation with a third party and the court determines that fairness to the third party requires that the fact or substance of an agreement resulting from mediation be disclosed; or

(5) When the disclosure reveals abuse or neglect of a child by one (1) of the parties.

(c) The mediator shall not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree in writing.

36-4-131. Mediation in cases involving domestic abuse.

(a) Except as provided in subsections (b), (c) and (d), in any proceeding for divorce or separate maintenance, the court shall order the parties to participate in mediation.

(b) The court may waive or extend mediation pursuant to subsection (a) for reasons including, but not limited to:

(1) Any factor codified in § 36-6-409(4);

(2) Either party is unable to afford the cost of the mediation, unless the cost is waived or subsidized by the state or if the cost of mediation would be an unreasonable burden on either or both of the parties

(3) The parties have entered into a written marital dissolution agreement or an agreed order resolving all of the pending issues in the divorce, except as provided in subsection (c);

(4) The parties have participated in a settlement conference presided over by the court or a special master;

(5) The court finds a substantial likelihood that mediation will result in an impasse; or

(6) For other cause found sufficient by the court.

(c) If the ground for the divorce is irreconcilable differences and the parties have filed with the court a properly executed marital dissolution agreement, and if there are minor children of the marriage, a properly executed parenting plan, the court shall not require the parties to attend mediation.

(d)

(1) In any proceeding for divorce or separate support and maintenance, if an order of protection issued in or recognized by this state is in effect or there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation, only if:

(A) Mediation is agreed to by the victim of the alleged domestic or family violence;

(B) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(C) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.

(2) Mediation conducted pursuant to subdivision (b)(1) shall be concluded and a report provided to the court no later than one hundred eighty (180) days from the date the complaint for divorce was filed.

36-4-134. Notice that the decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property. [Effective January 1, 2010.]

(a) Every final decree of divorce granted on any fault ground of divorce and every marital dissolution agreement shall contain a notice that the decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. The notice shall also state that it may be in a party's best interest to cancel, close or freeze any jointly held accounts.

(b) Failure to include the notice required by subsection (a) shall not affect the validity of the decree of divorce, legal separation or annulment.

36-6-101. Decree for custody and support of child -- Enforcement -- Juvenile court jurisdiction -- Presumption of parental fitness -- Educational seminars

(a)

(1) In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit or to both parties in the instance of joint custody or shared parenting, or to some suitable person, as the welfare and interest of the child or children may demand, and the court may decree that suitable support be made by the natural parents or those who stand in the place of the natural parents by adoption. Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require.

(2)

(A)

(i) Except as provided in this subdivision (a)(2)(A), neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child. Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted. The burden of proof necessary to modify an order of joint custody at a subsequent proceeding shall be by a preponderance of the evidence.

(ii) Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that custody shall not be awarded to a parent who has been convicted of a criminal offense under title 39, chapter 13, part 5, against a child less than eighteen (18) years of age.

(iii) Subdivision (a)(2)(A)(ii) shall apply only to persons who are convicted on or after July 1, 2006. Subdivision (a)(2)(A)(ii) and this subdivision (a)(2)(A)(iii) shall not be construed to prevent a parent from being granted visitation with the child; provided, however, that any visitation shall be supervised.

(iv) If it is determined by the court, based upon a prior order or reliable evidence, that a parent has willfully abandoned a child for a period of eighteen (18) months, as the term is used in § 36-6-406(a)(1), then, unless the court finds by clear and convincing evidence to the contrary, the abandoning parent's residential time, as provided in the permanent or temporary parenting plan or other court order, shall be limited. This subdivision (a)(2)(A)(iv) shall not be construed to prevent such a parent from being granted limited visitation with the child. Nothing in this subdivision (a)(2)(A)(iv) shall be construed to apply to children in the legal custody of the department of children's services.

(v) If prior to awarding joint legal custody, joint physical custody, or sole custody, the court finds one (1) parent is under indictment for the offense of aggravated child abuse under § 39-15-402, child sexual abuse under § 37-1-602, or severe child sexual abuse under § 36-1-113(g)(11), the court shall not award the parent under indictment any type of custody during the pendency of the indictment unless the presumption created by § 36-6-112(c)(2) is overcome; provided, however, that the court may grant the parent supervised visitation with the child. If the court finds that a parent to whom some form of custody has been ordered is indicted for one (1) of the offenses set out in this subdivision (a)(2)(A)(v), that finding shall constitute a material change in circumstance for the purpose of modifying any existing child custody orders.

(B)

(i) If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

(ii) In each contested case, the court shall make such a finding as to the reason and the facts that constitute the basis for the custody determination.

(iii) Nothing contained within this subdivision (a)(2) shall interfere with the requirement that parties to an action for legal separation, annulment, absolute divorce or separate maintenance incorporate a parenting plan into the final decree or decree modifying an existing custody order.

(iv) Nothing in this subsection (a) shall imply a mandatory modification to the child support order.

(C) If the issue before the court is a modification of the court's prior decree pertaining to a residential parenting schedule, then the petitioner must prove by a preponderance of the evidence a material change of circumstance affecting the child's best interest. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance for purposes of modification of a residential parenting schedule may include, but is not limited to, significant changes in the needs of the child over time, which may include changes relating to age; significant changes in the parent's living or working condition that significantly affect parenting; failure to adhere to the parenting plan; or other circumstances making a change in the residential parenting time in the best interest of the child.

(3)

(A) Except when the court finds it not to be in the best interests of the affected child, each order pertaining to the custody or possession of a child arising from an action for absolute divorce, divorce from bed and board or annulment shall grant to each parent the rights listed in subdivisions (a)(3)(B)(i)-(vi) during periods when the child is not in that parent's possession or shall incorporate such rights by reference to a prior order. Other orders pertaining to custody or possession of a child may contain the rights listed in subdivisions (a)(3)(B)(i)-(vi).

(B) The referenced rights are as follows:

(i) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times;

(ii) The right to send mail to the child which the other parent shall not destroy, deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;

(iii) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event and shall provide all relevant healthcare providers with the contact information for the other parent;

(iv) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one (1) parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being homeschooled, the parent providing the homeschooling shall advise the other parent of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education, including access to any individual student records or grades available online. The school or homeschooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

(v) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the treating physician or healthcare provider. Upon request from one (1) parent, the parent who has arranged for such treatment or health care shall provide to the other parent the name, address, telephone number and other contact information of the physician or healthcare provider. The keeper of the records may require a written request including a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to the other parent or a third person;

(vi) The right to be free of unwarranted derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child;

(vii) The right to be given at least forty-eight (48) hours' notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order;

(viii) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and

(ix) The right to access and participation in the child's education on the same basis that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is legal and reasonable; however, access must not interfere with the school's day-to-day operations or with the child's educational schedule.

(C) Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child. Nothing herein shall be construed to prohibit the court from ordering additional rights where the facts and circumstances so require.

(D) All parenting plans submitted to the court by one (1) party only shall contain the notarized signature of that party. All parenting plans submitted to the court by both parties jointly shall contain the notarized signature of both parties.

(4) Notwithstanding any common law presumption to the contrary, a finding under former § 36-6-106(a)(8), that child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, has occurred within the family shall give rise to a rebuttable presumption that it is detrimental to the child and not in the best interests of the child to award sole custody, joint legal or joint physical custody to the perpetrator of such abuse.

(b) Notwithstanding any provision of this section to the contrary, the party, or parties, or other person awarded custody and control of such child or children shall be entitled to enforce the court's decree concerning the suitable support of such child or children in the appropriate court of any county in this state in which such child or children reside; provided, that such court shall have divorce jurisdiction, if service of process is effectuated upon the obligor within this state. Jurisdiction to modify or alter such decree shall remain in the exclusive control of the court that issued such decree.

(c) Nothing in this chapter shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

(d) It is the legislative intent that the gender of the party seeking custody shall not give rise to a presumption of parental fitness or cause a presumption or constitute a factor in favor or against the award of custody to such party.

(e)

(1) In an action for dissolution of marriage involving minor children, or in a post-judgment proceeding involving minor children, if the court finds, on a case by case basis, that it would be in the best interest of the minor children, the court may on its own motion, or on the motion of either party, order the parties, excluding the minor children, to attend an educational seminar concerning the effects of the dissolution of marriage on the children. The program may be divided into sessions, which in the aggregate shall not exceed four (4) hours in duration. The program shall be educational in nature and not designed for individual therapy.

(2) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Fees may be waived upon motion for indigent persons.

(3) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session. Refusal to attend the educational session may be punished by contempt and may be considered by the court as evidence of the parent's lack of good faith in proceedings under part 4 of this chapter.

36-6-102. Custody, visitation and inheritance rights denied to parent convicted of rape where child conceived from crime -- Exception -- Child support obligation.

(a) Except as provided in subsection (b), any person who has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime a child was conceived shall not have custody or visitation rights, or the rights of inheritance with respect to that child.

(b) The other parent of the child may waive the protection afforded under subsection (a) regarding visitation and request that the court grant reasonable visitation rights with the child if paternity has been acknowledged.

(c) Unless waived by the other parent and, if contributing toward support of the child, the department of human services, a court shall establish a child support obligation against the father of the child pursuant to chapter 5, part 1 of this title.

36-6-106. Child custody.

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(6) The love, affection, and emotional ties existing between each parent and the child;

(7) The emotional needs and developmental level of the child;

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3)must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(15) Any other factors deemed relevant by the court.

(b) Notwithstanding any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.

(c) As used in this section, "caregiver" has the meaning ascribed to that term in § 37-5-501.

(d) Nothing in subsections (a) and (c) shall be construed to affect or diminish the constitutional rights of parents that may arise during and are inherent in custody proceedings.

(e) The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court.

(f) If the petitioner knows whether a child has ever been adjudicated by a court as a dependent and neglected or abused child or whether any party to the action has ever been adjudicated by a court as the perpetrator of dependency and neglect or abuse of a minor child, any petition regarding child custody shall include an affirmative statement setting out all applicable adjudications. If an adjudication has occurred as a result of a child protective services investigation, the court may order the department of children's services to disclose information regarding the investigation to protect the child from abuse or neglect consistent with § 37-1-612(h). The court shall consider any such information as a factor in determining the child's best interest.

36-6-112. Parent alleging abuse.

(a) This section shall be known and may be cited as the "Protective Parent Reform Act."

(b) If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation, or contact with the child, or restricted in custody, visitation, or contact, based solely on that belief or the reasonable actions taken based on that belief.

(c)

(1) If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child.

(2) A parent is presumed to present a substantial risk of harm to the child if the parent is under indictment for the offense of aggravated child abuse under § 39-15-402, child sexual abuse under § 37-1-602, or severe child sexual abuse under § 36-1-113(g)(11). The parent shall remain a risk of harm during the pendency of the indictment; provided, however, that the court may grant the parent supervised visitation with the child.

36-6-306. Grandparents' visitation rights.

(a) Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit, chancery, general sessions courts with domestic relations jurisdiction, other courts with domestic relations jurisdiction or juvenile court in matters involving children born out of wedlock of the county in which the petitioned child currently resides, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents or custodian or if the grandparent visitation has been severely reduced by the custodial parent or parents or custodian:

(1) The father or mother of an unmarried minor child is deceased;

(2) The child's father or mother are divorced, legally separated, or were never married to each other;

(3) The child's father or mother has been missing for not less than six (6) months;

(4) The court of another state has ordered grandparent visitation;

(5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent, parents, or custodian (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or

(6) The child and the grandparent maintained a significant existing relationship for a period of twelve (12) months or more immediately preceding severance or severe reduction of the relationship, this relationship was severed or severely reduced by the parent, parents, or custodian for reasons other than abuse or presence of a danger of substantial harm to the child, and severance or severe reduction of this relationship is likely to occasion substantial emotional harm to the child.

(b)

(1) In considering a petition for grandparent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation or severe reduction of the relationship between an unmarried minor child and the child's grandparent if the court determines, upon proper proof, that:

(A) The child had such a significant existing relationship with the grandparent that loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child;

(B) The grandparent functioned as a primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or

(C) The child had a significant existing relationship with the grandparent and loss or severe reduction of the relationship presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a grandparent shall be deemed to have a significant existing relationship with a grandchild if:

(A) The child resided with the grandparent for at least six (6) consecutive months;

(B) The grandparent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or

(C) The grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year.

(3) A grandparent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the grandparent and grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child.

(4) For the purposes of this section, if the child's parent is deceased and the grandparent seeking visitation is the parent of that deceased parent, there shall be a rebuttable presumption of substantial harm to the child based upon the cessation or severe reduction of the relationship between the child and grandparent.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether grandparent visitation would be in the best interests of the child based upon the factors in § 36-6-307. Upon such determination, reasonable visitation may be ordered.

(d)

(1) Notwithstanding § 36-1-121, if a relative or stepparent adopts a child, this section applies.

(2) If a person other than a relative or a stepparent adopts a child, any visitation rights granted pursuant to this section before the adoption of the child shall automatically end upon such adoption.

(e) Notwithstanding any law to the contrary, as used in this part, with regard to the petitioned child, the word "grandparent" includes, but is not limited to:

(1) A biological grandparent;

(2) The spouse of a biological grandparent;

(3) A parent of an adoptive parent; or

(4) A biological or adoptive great-grandparent or the spouse thereof.

(f) For purposes of this section, "severe reduction" or "severely reduced" means reduction to no contact or token visitation as defined in § 36-1-102.

36-6-307. Determination of best interests of child for grandparent visitations.

In determining the best interests of the child under § 36-6-306, the court shall consider all pertinent matters, including, but not necessarily limited to, the following:

(1) The length and quality of the prior relationship between the child and the grandparent and the role performed by the grandparent;

(2) The existing emotional ties of the child to the grandparent;

(3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;

(4) The effect of hostility between the grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between the child and the parent or parents, or guardian or guardians of the child;

(5) The good faith of the grandparent in filing the petition;

(6) If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with respect to the child;

(7) If one (1) parent is deceased or missing, the fact that the grandparents requesting visitation are the parents of the deceased or missing person;

(8) Any unreasonable deprivation of the grandparent's opportunity to visit with the child by the child's parents or guardian, including denying visitation of the minor child to the grandparent for a period exceeding ninety (90) days;

(9) Whether the grandparent is seeking to maintain a significant existing relationship with the child;

(10) Whether awarding grandparent visitation would interfere with the parent-child relationship; and

(11) Any court finding that the child's parent or guardian is unfit.

36-6-404. Requirement of and procedure for determining permanent parenting plan.

(a) Any final decree or decree of modification in an action for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child shall incorporate a permanent parenting plan; provided, however, that this part shall be inapplicable to parties who were divorced prior to July 1, 1997, and thereafter return to court to enter an agreed order modifying terms of the previous court order. A permanent parenting plan shall:

(1) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;

(2) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in this part;

(3) Minimize the child's exposure to harmful parental conflict;

(4) Provide for a process for dispute resolution, before court action, unless precluded or limited by § 36-6-406; provided, that state agency cases are excluded from the requirement of dispute resolution as to any child support issue involved. In the process for dispute resolution:

(A) Preference shall be given to carrying out the parenting plan;

(B) The parents shall use the designated process to resolve disputes relating to the implementation of the plan;

(C) A written record shall be prepared of any agreement reached in mediation, arbitration, or settlement conference and shall be provided to each party to be drafted into a consent order of modification;

(D) If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process without good reason, the court may, upon motion, award attorney fees and financial sanctions to the prevailing parent;

(E) The provisions of this subsection (a) shall be set forth in the decree; and

(F) Nothing in this part shall preclude court action, if required to protect the welfare of the child or a party;

(5) Allocate decision-making authority to one (1) or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in this part. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child;

(6) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent;

(7) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject to the exception set forth in subdivision (a)(4)(F);

(8) Require the obligor to report annually on a date certain to the obligee, and the department of human services or its contractor in Title IV-D cases, on a form provided by the court, the obligor's income as defined by the child support guidelines and related provisions contained in chapter 5 of this title; and

(9) Specify that if the driver license of a parent is currently expired, canceled, suspended or revoked or if the parent does not possess a valid driver license for any other reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety and welfare of the child when such child is in the custody of such parent.

(b) Any permanent parenting plan shall include a residential schedule as defined in § 36-6-402. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)-(15).

(c) The court shall approve a permanent parenting plan as follows:

(1) Upon agreement of the parties:

(A) With the entry of a final decree or judgment; or

(B) With a consent order to modify a final decree or judgment involving a minor child;

(2) If the parties cannot reach agreement on a permanent parenting plan, upon the motion of either party, or upon its own motion, the court may order appropriate dispute resolution proceedings pursuant to Tennessee Rules of the Supreme Court, Rule 31, to determine a permanent parenting plan; or

(3) If the parties have not reached agreement on a permanent parenting plan on or before forty-five (45) days before the date set for trial, each party shall file and serve a proposed permanent parenting plan, even though the parties may continue to mediate or negotiate. Failure to comply by a party may result in the court's adoption of the plan filed by the opposing party if the court finds such plan to be in the best interests of the child. In determining whether the proposed plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in chapter 5 of this title. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and related provisions contained in chapter 5 of this title, and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

(d) The administrative office of the courts shall develop a "parenting plan" form that shall be used consistently by each court within the state that approves parenting plans pursuant to § 36-6-403 or this section on and after July 1, 2005. The administrative office of the courts shall be responsible for distributing such form for the use of those courts no later than June 1, 2005. The administrative office of the courts shall be responsible for updating such form as it deems necessary, in consultation with the Tennessee family law commission, the domestic relations committee of the Tennessee judicial conference, and other knowledgeable persons.

36-6-405. Modification of permanent parenting plans.

(a) In a proceeding for a modification of a permanent parenting plan, a proposed parenting plan shall be filed and served with the petition for modification and with the response to the petition for modification. Such plan is not required if the modification pertains only to child support. The obligor parent's proposed parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child support guidelines and related provisions contained in chapter 5 of this title. If the parties cannot agree to a modification of a permanent parenting plan, the process established by § 36-6-404(b) shall be used to establish an amended permanent parenting plan or final decree or judgment.

(b) In a proceeding for a modification of a permanent parenting plan, the existing residential schedule shall not be modified prior to a final hearing unless the parents agree to the modification or the court finds that the child will be subject to a likelihood of substantial harm absent the temporary modification. If a temporary modification of the existing residential schedule is granted ex parte, the respondent shall be entitled to an expedited hearing within fifteen (15) days of the entry of the temporary modification order.

(c) Title IV-D child support cases involving the department of human services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning Title IV-D issues, which shall not be contained in, or part of, temporary, permanent or modified parenting plans. The department and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to this part.

(d) If the parties agree to a modification of an existing permanent parenting plan, and the parties announce to the court and place on the record an agreement specifying the terms of modification, or if the parties execute a permanent parenting plan which modifies a prior order of the court with respect to either custody or residential parenting schedule which is approved through entry of an agreed order, then the court is not required to inquire further and make an independent determination as to whether the modification is in the best interest of the child. An order of the court approving the agreement and stating that the modification is made by agreement of the parties satisfies the requirements of Rule 52.01 of the Tennessee rules of civil procedure. The court is not required to accept an agreement of the parties modifying a permanent parenting plan, and this subsection (d) does not diminish the authority of the court to make inquiry and ensure that the modification of the permanent parenting plan is in the best interest of the child, is entered into freely and voluntarily by both parents, and is not the product of duress, coercion, or undue influence.

36-6-406. Restrictions in temporary or permanent parenting plans.

(a) The permanent parenting plan and the mechanism for approval of the permanent parenting plan shall not utilize dispute resolution, and a parent's residential time as provided in the permanent parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities; or

(2) Physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(b) The parent's residential time with the child shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that the parent resides with a person who has engaged in physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(c) If a parent has been convicted as an adult of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 - 39-13-511, or has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 - 39-13-511, or who has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain that parent from contact with the child unless the contact occurs outside the adult's or juvenile's presence and sufficient provisions are established to protect the child.

(d) A parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of a parenting plan, if any of the following limiting factors are found to exist after a hearing:

(1) A parent's neglect or substantial nonperformance of parenting responsibilities;

(2) An emotional or physical impairment that interferes with the parent's performance of parenting responsibilities as defined in § 36-6-402;

(3) An impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(4) The absence or substantial impairment of emotional ties between the parent and the child;

(5) The abusive use of conflict by the parent that creates the danger of damage to the child's psychological development;

(6) A parent has withheld from the other parent access to the child for a protracted period without good cause;

(7) A parent's criminal convictions as they relate to such parent's ability to parent or to the welfare of the child; or

(8) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(e) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(f)

(1) In all Title IV-D child or spousal support cases in which payment of support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only approve a temporary or permanent parenting plan involving the payment of support that complies with the requirements for central collection and disbursement as required by § 36-5-116. Prior to approval of a parenting plan in which payments are to be made directly to the spouse or the court clerk or to some other person or entity, there shall be filed with the plan presented to

the court a written certification, under oath if filed by a party, or signed by the party's counsel, stating whether the case for which the plan is to be approved is a Title IV-D support case subject to enforcement by the department of human services or is otherwise subject to collection through the department's central collection and disbursement unit established by § 36-5-116.

(2) Any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit for support payments shall be given by the court, the court clerk or the department of human services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(g) Forms used by parties as parenting plans or adopted by the court for their use, shall conform to all substantive language requirements established by the administrative office of the courts at such time as parenting plan forms are promulgated and approved by that office.

36-6-409. Procedures and restrictions applicable to dispute resolution.

The following procedures and restrictions are applicable to the use of the dispute resolution process under this part:

(1) Each neutral party, the court, or the special master shall apply or, in the case of mediation, assist the parties to uphold as a standard for making decisions in mediation, the criteria in this part. Nothing in this part shall be construed to prevent a party from having the party's attorney present at a mediation or other dispute resolution procedure.

(2) The Tennessee rules of evidence do not apply in any mediation or alternative dispute resolution process; the neutral party may rely upon evidence submitted that reasonably prudent persons would rely upon in the conduct of their affairs.

(3) When dispute resolution is utilized in this chapter, it shall be preceded by a pretrial conference and the attendance by parents at the parent education seminar set forth in § 36-6-408.

(4) The court shall not order a dispute resolution process, except court action, if the court:

(A) Finds that any limiting factor under § 36-6-406 applies;

(B) Finds that either parent is unable to afford the cost of the proposed dispute resolution process, unless such cost is waived or subsidized by the state;

(C) Enters a default judgment against the defendant; or

(D) Preempts such process upon motion of either party for just cause.

(5) If an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or criminal conviction involving domestic abuse within the marriage which is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer the parties to mediation only if:

(A) Mediation is agreed to by the victim of the alleged domestic or family violence;

(B) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(C) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation. The other party may also have in attendance at mediation a supporting person of such party's choice, including, but not limited to, an attorney or advocate.

(6) If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(A) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(B) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(C) The financial circumstances of the parties to pay for alternative dispute resolution processes where court sanctioned alternative dispute resolution programs are unavailable.

III. Criminal Offenses

39-11-611. Self-defense.

(a) As used in this section, unless the context otherwise requires:

(1) "Business" means a commercial enterprise or establishment owned by a person as all or part of the person's livelihood or is under the owner's control or who is an employee or agent of the owner with responsibility for protecting persons and property and shall include the interior and exterior premises of the business;

(2) "Category I nuclear facility" means a facility that possesses a formula quantity of strategic special nuclear material, as defined and licensed by the United States nuclear regulatory commission, and that must comply with the requirements of 10 CFR Part 73;

(3) "Curtilage" means the area surrounding a dwelling that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of a person's home;

(4) "Deadly force" means the use of force intended or likely to cause death or serious bodily injury;

(5) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, that has a roof over it, including a tent, and is designed for or capable of use by people;

(6) "Nuclear power reactor facility" means a reactor designed to produce heat for electric generation, for producing radiation or fissionable materials, or for reactor component testing, and does not include a reactor used for research purposes;

(7) "Nuclear security officer" means a person who meets the requirements of 10 CFR Part 73, Appendix B, who is an employee or an employee of a contractor of the owner of a category I nuclear facility or nuclear power reactor facility, and who has been appointed or designated by the owner of a category I nuclear facility or nuclear power reactor facility to provide security for the facility;

(8) "Residence" means a dwelling in which a person resides, either temporarily or permanently, or is visiting as an invited guest, or any dwelling, building or other appurtenance within the curtilage of the residence; and

(9) "Vehicle" means any motorized vehicle that is self-propelled and designed for use on public highways to transport people or property.

(b)

(1) Notwithstanding § 39-17-1322, a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.

(2) Notwithstanding § 39-17-1322, a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury, if:

(A) The person has a reasonable belief that there is an imminent danger of death or serious bodily injury;

(B) The danger creating the belief of imminent death or serious bodily injury is real, or honestly believed to be real at the time; and

(C) The belief of danger is founded upon reasonable grounds.

(c) Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest, when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, business, dwelling or vehicle, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.

(d) The presumption established in subsection (c) shall not apply, if:

(1) The person against whom the force is used has the right to be in or is a lawful resident of the dwelling, business, residence, or vehicle, such as an owner, lessee, or titleholder; provided, that the person is not prohibited from entering the dwelling, business, residence, or occupied vehicle by an order of protection, injunction for protection from domestic abuse, or a court order of no contact against that person;

(2) The person against whom the force is used is attempting to remove a person or persons who is a child or grandchild of, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;

(3) Notwithstanding § 39-17-1322, the person using force is engaged in an unlawful activity or is using the dwelling, business, residence, or occupied vehicle to further an unlawful activity; or

(4) The person against whom force is used is a law enforcement officer, as defined in § 39-11-106, who enters or attempts to enter a dwelling, business, residence, or vehicle in the performance of the officer's official duties, and the officer identified the officer in accordance with any applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(e) The threat or use of force against another is not justified:

(1) If the person using force consented to the exact force used or attempted by the other individual;

(2) If the person using force provoked the other individual's use or attempted use of unlawful force, unless:

(A) The person using force abandons the encounter or clearly communicates to the other the intent to do so; and

(B) The other person nevertheless continues or attempts to use unlawful force against the person; or

(3) To resist a halt at a roadblock, arrest, search, or stop and frisk that the person using force knows is being made by a law enforcement officer, unless:

(A) The law enforcement officer uses or attempts to use greater force than necessary to make the arrest, search, stop and frisk, or halt; and

(B) The person using force reasonably believes that the force is immediately necessary to protect against the law enforcement officer's use or attempted use of greater force than necessary.

(f) A nuclear security officer is authorized to use deadly force under the following circumstances:

(1) Deadly force appears reasonably necessary to prevent or impede an act, or attempted act, of radiological sabotage at a category I nuclear facility or nuclear power reactor facility, including, but not limited to, situations where a person is attempting to, or has, unlawfully or forcefully entered a category I nuclear facility or nuclear power reactor facility, and where adversary tactics are employed to attempt an act of radiological sabotage, such as, but not limited to:

(A) Use of firearms or small arms;

(B) Use of explosive devices;

(C) Use of incendiary devices;

(D) Use of vehicle borne improvised explosive devices;

(E) Use of water borne improvised explosive devices;

(F) Breaching of barriers; and

(G) Use of other adversary or terrorist tactics which could be employed to attempt an act of radiological sabotage;

(2) Deadly force appears reasonably necessary to protect the nuclear security officer or another person if the nuclear security officer reasonably believes there is an imminent danger of death or serious bodily injury;

(3) Deadly force appears reasonably necessary to prevent the imminent infliction or threatened infliction of death or serious bodily harm or the sabotage of an occupied facility by explosives;

(4) Deadly force appears reasonably necessary to prevent the theft, sabotage, or unauthorized control of special nuclear material from a nuclear power reactor facility or of a nuclear weapon or nuclear explosive device or special nuclear material from a category I nuclear facility; or

(5) Deadly force reasonably appears to be necessary to apprehend or prevent the escape of a person reasonably believed to:

(A) Have committed an offense of the nature specified under this subsection (f); or

(B) Be escaping by use of a weapon or explosive or who otherwise poses an imminent danger of death or serious bodily harm to nuclear security officers or others unless apprehended without delay.

39-13-102. Aggravated assault.

(a)

(1) A person commits aggravated assault who:

(A) Intentionally or knowingly commits an assault as defined in § 39-13-101, and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another;

(iii) Involved the use or display of a deadly weapon; or

(iv) Involved strangulation or attempted strangulation; or

(B) Recklessly commits an assault as defined in § 39-13-101(a)(1), and the assault:

(i) Results in serious bodily injury to another;

(ii) Results in the death of another; or

(iii) Involved the use or display of a deadly weapon.

(2) For purposes of subdivision (a)(1)(A)(iv), "strangulation" means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person, regardless of whether that conduct results in any visible injury or whether the person has any intent to kill or protractedly injure the victim.

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to protect the child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

(c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or

attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals.

(d) [Deleted by 2018 amendment.]

(e)

(1)

(A) Aggravated assault under:

(i) [Deleted by 2018 amendment.]

(ii) Subdivision (a)(1)(A)(i), (iii), or (iv) is a Class C felony;

(iii) Subdivision (a)(1)(A)(ii) is a Class C felony;

(iv) Subdivision (b) or (c) is a Class C felony;

(v) Subdivision (a)(1)(B)(i) or (iii) is a Class D felony;

(vi) Subdivision (a)(1)(B)(ii) is a Class D felony.

(B) However, the maximum fine shall be fifteen thousand dollars ($15,000) for an offense under subdivision (a)(1)(A) or (a)(1)(B), or subsection (c), committed against any of the following persons who are discharging or attempting to discharge their official duties:

(i) Law enforcement officer;

(ii) Firefighter;

(iii) Medical fire responder;

(iv) Paramedic;

(v) Emergency medical technician;

(vi) Healthcare provider;

(vii) Any other first responder; or

(viii) An identifiable employee or contractor of a utility.

(2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a domestic abuse victim as defined in § 36-3-601, and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars ($200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars ($200). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

(3)

(A) In addition to any other punishment authorized by this section, the court shall order a person convicted of aggravated assault under the circumstances set out in this subdivision (e)(3) to pay restitution to the victim of the offense. Additionally, the judge shall order the warden, chief operating officer, or workhouse administrator to deduct fifty percent (50%) of the restitution ordered from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. The judge may authorize the deduction of up to one hundred percent (100%) of the restitution ordered.

(B) Subdivision (e)(3)(A) applies if:

(i) The victim of the aggravated assault is a correctional officer, guard, jailer, or other full-time employee of a penal institution, local jail, or workhouse;

(ii) The offense occurred while the victim was in the discharge of official duties and within the victim's scope of employment; and

(iii) The person committing the assault was at the time of the offense, and at the time of the conviction, serving a sentence of incarceration in a public or private penal institution as defined in § 39-16-601.

(4) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a domestic abuse victim as defined in § 36-3-601, the court shall assess each person convicted an electronic monitoring indigency fee of ten dollars ($10.00). All proceeds collected pursuant to this subdivision (e)(4) shall be transmitted to the treasurer for deposit in the electronic monitoring indigency fund, established in § 55-10-419.

(5) Notwithstanding this subsection (e), a person convicted of a violation of subdivision (a)(1)(A)(i), (a)(1)(A)(ii), (a)(1)(B)(i), or (a)(1)(B)(ii) shall be punished one (1) classification higher than is otherwise provided if:

(A) The violation was committed by discharging a firearm from within a motor vehicle, as defined by § 55-1-103; and

(B) The victim was a minor at the time of the violation.

39-13-103. Reckless endangerment.

(a) A person commits an offense who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.

(b)

(1) Reckless endangerment is a Class A misdemeanor;

(2) Reckless endangerment committed with a deadly weapon is a Class E felony

(3) Reckless endangerment by discharging a firearm into a habitation, as defined under § 39-14-401, is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony.

(4) In addition to the penalty authorized by this subsection (b), the court shall assess a fine of fifty dollars ($50.00) to be collected as provided in § 55-10-412(b) and distributed as provided in § 55-10-412(c).

39-13-107. Fetus as victim.

(a) For the purposes of this part, "another," "individuals," and "another person" include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part.

(b) Nothing in this section shall be construed to amend the provisions of § 39-15-201, or §§ 39-15-203 – 39-15-205 and 39-15-207.

(c) Nothing in subsection (a) shall apply to any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant, or to any lawful medical or surgical procedure to which a pregnant woman consents, performed by a health care professional who is licensed to perform such procedure.

39-13-111. Domestic assault.

(a) As used in this section, "domestic abuse victim" means any person who falls within the following categories:

(1) Adults or minors who are current or former spouses;

(2) Adults or minors who live together or who have lived together;

(3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;

(4) Adults or minors related by blood or adoption;

(5) Adults or minors who are related or were formerly related by marriage; or

(6) Adult or minor children of a person in a relationship that is described in subdivisions (a)(1)-(5).

(b) A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim.

(c)

(1) A first conviction for domestic assault and a second or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(2) and (a)(3) is punishable the same as assault under § 39-13-101, and additionally, as provided in subdivisions (c)(2) and (c)(3) and subsections (d) and (e) of this section.

(2) A second conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than three hundred fifty dollars ($350) nor more than three thousand five hundred dollars ($3,500), and by confinement in the county jail or workhouse for not less than thirty (30) consecutive days, nor more than eleven (11) months and twenty-nine (29) days.

(3) A third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than one thousand one hundred dollars ($1,100) nor more than five thousand dollars ($5,000), and by confinement in the county jail or workhouse for not less than ninety (90) consecutive days, nor more than eleven (11) months and twenty-nine (29) days; provided, however, that if the domestic assault victim's relationship with the defendant falls within the categories defined in subdivision (a)(1) or (a)(3), or the victim is the minor child of any person in such categories, and the defendant has at least two (2) prior convictions for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) prior to or at the time of committing the offense, the offense is a Class E felony, with a mandatory confinement of not less than ninety (90) consecutive days in the county jail or workhouse.

(4) For purposes of this section, a person who is convicted of a violation of § 39-13-111 committed in a manner prohibited by § 39-13-101(a)(1), shall not be subject to the enhanced penalties prescribed in this subsection (c), if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 39-13-111, committed in a manner prohibited by § 39-13-101(a)(1), that resulted in a conviction for such offense.

(5) In addition to any other punishment that may be imposed for a violation of this section, if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred twenty-five dollars ($225), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred twenty-five dollars ($225). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. This appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

(6) If a defendant pleads guilty or is found guilty of a domestic violence offense, as defined by this section or in § 40-14-109, the judge shall immediately order that the defendant:

(A) Terminate physical possession of all firearms in the defendant's possession within forty-eight (48) hours of the conviction by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms; and

(B)

(i) Complete an affidavit of firearms dispossession form and return it to the court in which the defendant was convicted when all firearms have been lawfully dispossessed as required by subdivision (c)(6)(A);

(ii) The defendant may obtain the affidavit of dispossession from the court or court clerk or the defendant may be directed to obtain a copy from the website of the administrative office of the courts.

(7) In addition to all other fines, fees, costs, and punishments now prescribed by law, the court shall assess each person convicted of domestic assault an electronic monitoring indigency fee of ten dollars ($10.00). All proceeds collected pursuant to this subdivision (c)(7) shall be transmitted to the treasurer for deposit in the electronic monitoring indigency fund, established in § 55-10-419.

(d) As part of a defendant's alternative sentencing for a violation of this section, the sentencing judge may direct the defendant to complete a drug or alcohol treatment program or available counseling programs that address violence and control issues including, but not limited to, a batterer's intervention program that has been certified by the domestic violence state coordinating council. Completion of a noncertified batterer's intervention program shall only be ordered if no certified program is available in the sentencing county. No batterer's intervention program, certified or noncertified, shall be deemed complete until the full term of the program is complete, and a judge may not require a defendant to attend less than the full term of a program as part of a plea agreement or otherwise. The defendant's knowing failure to complete such an intervention program shall be considered a violation of the defendant's alternative sentence program and the sentencing judge may revoke the defendant's participation in such program and order execution of sentence.

(e) A person convicted of a violation under this section shall be required to serve at least the minimum sentence day for day. All persons sentenced under this section shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on supervised probation.

39-13-113. Violation of an order of protection or restraining order.

(a) It is an offense to knowingly violate:

(1) An order of protection issued pursuant to title 36, chapter 3, part 6; or

(2) A restraining order issued to a victim as defined in § 36-3-601.

(b) A person violating this section may be arrested with or without a warrant as provided in § 36-3-611, and the arrest shall be conducted in accordance with the requirements of § 36-3-619.

(c) A person who is arrested for a violation of this section shall be considered within the provisions of § 40-11-150(a) and subject to the twelve-hour holding period authorized by § 40-11-150(h).

(d) After a person has been arrested for a violation of this section, the arresting officer shall inform the victim that the person has been arrested and that the person may be eligible to post bond for the offense and be released until the date of trial for the offense.

(e) Neither an arrest nor the issuance of a warrant or capias for a violation of this section in any way affects the validity or enforceability of any order of protection or restraining order, or no contact order.

(f) In order to constitute a violation of subsection (a):

(1) The person must have received notice of the request for an order of protection or restraining order;

(2) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(3) The court made specific findings of fact in the order of protection or restraining order that the person committed domestic abuse, sexual assault or stalking as defined in § 36-3-601.

(g) A violation of subsection (a) is a Class A misdemeanor. Notwithstanding § 40-35-111(e) (1), a violation of this section is punishable by a fine of not less than one hundred dollars ($100) nor more than two thousand five hundred dollars ($2,500), and any sentence imposed shall be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations. However, unless the sentencing judge or magistrate may specifically orders the sentences for the offenses arising out of the same facts to be served concurrently.

(h)

(1) It is an offense and a violation of an order of protection for a person to knowingly possess a firearm while an order of protection that fully complies with 18 U.S.C. § 922(g)(8) is entered against that person and in effect, or any successive order

of protection containing the language of § 36-3-606(g) and that fully complies with 18 U.S.C. § 922(g)(8) is entered against that person and in effect.

(2) For purposes of this subsection (h), the determination of whether a person possesses firearms shall be based upon the factors set out in § 36-3-625(f) if the firearms constitute the business inventory or are subject to the National Firearms Act, compiled in 26 U.S.C. § 5801 et seq.

(3) A violation of this subsection (h) is a Class A misdemeanor and each violation constitutes a separate offense.

(4) If a violation of subsection (h) also constitutes a violation of § 36-3-625(h) or § 39-17-1307(e), the respondent may be charged and convicted under any or all such sections.

(i)

(1) lt is an offense to knowingly violate a no contact order, issued prior to a defendant's release on bond, following the defendant's arrest for any criminal offense defined in this chapter, in which the alleged victim of the offense is a domestic abuse victim as defined in 36-3-601.

(2) A violation of this subdivision (i)(1) is a Class A misdemeanor. A sentence imposed must be served consecutively to the sentence for the offense for which the defendant was originally arrested, unless the sentencing judge or magistrate specifically orders the sentences for the offenses to be served concurrently.

39-13-202. First degree murder.

(a) First degree murder is:

(1) A premeditated and intentional killing of another;

(2) A killing of another committed in the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect, rape of a child, aggravated rape of a child or aircraft piracy; or

(3) A killing of another committed as the result of the unlawful throwing, placing or discharging of a destructive device or bomb.

(b) No culpable mental state is required for conviction under subdivision (a)(2) or (a)(3), except the intent to commit the enumerated offenses or acts in those subdivisions.

(c) A person convicted of first degree murder shall be punished by:

(1) Death;

(2) Imprisonment for life without possibility of parole; or

(3) Imprisonment for life.

(d) As used in subdivision (a)(1), "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

39-13-210. Second degree murder

(a) Second degree murder is:

(1) A knowing killing of another;

(2) A killing of another that results from the unlawful distribution of any Schedule I or Schedule II drug, when the drug is the proximate cause of the death of the user; or

(3) A killing of another by unlawful distribution or unlawful delivery or unlawful dispensation of fentanyl or carfentanil, when those substances alone, or in combination with any substance scheduled as a controlled substance by the Tennessee Drug Control Act of 1989, compiled in chapter 17, part 4 of this title and in title 53, chapter 11, parts 3 and 4, including controlled substance analogs, is the proximate cause of the death of the user.

(b) In a prosecution for a violation of this section, if the defendant knowingly engages in multiple incidents of domestic abuse, assault or the infliction of bodily injury against a single victim, the trier of fact may infer that the defendant was aware that the cumulative effect of the conduct was reasonably certain to result in the death of the victim, regardless of whether any single incident would have resulted in the death.

(c)

(1) Second degree murder is a Class A felony.

(2) Notwithstanding the Tennessee Criminal Sentencing Reform Act of 1989, compiled in title 40, chapter 35, a person convicted of a violation of subdivision (a)(2) where the victim is a minor shall be punished from within one (1) range higher than the sentencing range otherwise appropriate for the person.

39-13-214. "Another" and "another person" to include fetus of a human being.

(a) For the purposes of this part, “another” and “another person” include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part.

(b) Nothing in this section shall be construed to amend § 39-15-201, or §§ 39-15-203 — 39-15-205 and 39-15-207.

(c) Nothing in subsection (a) shall apply to any act or omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant, or to any lawful medical or surgical procedure to which a pregnant woman consents, performed by a health care professional who is licensed to perform such procedure.

39-13-301. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Advertisement" means a notice or an announcement in a public medium promoting a product, service, or event, or publicizing a job vacancy;

(2) "Blackmail" means threatening to expose or reveal the identity of another or any material, document, secret or other information that might subject a person to hatred, contempt, ridicule, loss of employment, social status or economic harm;

(3) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that, if revealed, would tend to subject a person to criminal or immigration proceedings, hatred, contempt or ridicule;

(C) Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as defined in § 39-17-402, or a controlled substance analogue, as defined in § 39-17-454, to a person;

(4) "Commercial sex act" means:

(A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or

(B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

(5) "Deception" means:

(A) Creating or confirming another person's impression of an existing fact or past event that is false and that the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of the debt; or

(C) Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this part;

(6) "Financial harm" includes extortion as defined by § 39-14-112, criminal violation of the usury laws as defined by § 47-14-112 or employment contracts that violate the statute of frauds as defined by § 29-2-101(b);

(7) "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through the defendant's:

(A) Causing or threatening to cause serious harm to any person;

(B) Physically restraining or threatening to physically restrain another person;

(C) Abusing or threatening to abuse the law or legal process;

(D) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) Blackmail; or

(F) Causing or threatening to cause financial harm to in order to exercise financial control over any person;

(8) "Involuntary servitude" means the condition of a person who is compelled by force, coercion or imprisonment and against the person's will to labor for another, whether paid or not;

(9) "Labor" means work of economic or financial value;

(10) "Maintain" means, in relation to labor or services, to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform such type of service;

(11) "Minor" means an individual who is less than eighteen (18) years of age;

(12) "Obtain" means, in relation to labor or services, to secure performance of labor or services;

(13) "Services" means an ongoing relationship between a person and the defendant in which the person performs activities under the supervision of or for the defendant;

(14) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound or otherwise physically restrained on the part of a person who is nude

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; and

(15) "Unlawful" means, with respect to removal or confinement, one that is accomplished by force, threat or fraud, or, in the case of a person who is under the age of thirteen (13) or incompetent, accomplished without the consent of a parent, guardian or other person responsible for the general supervision of the minor's or incompetent's welfare.

39-13-306. Custodial interference.

(a) It is the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of a child younger than eighteen (18) years of age to:

(1) Remove the child from this state knowing that the removal violates a child custody determination as defined in § 36-6-205, the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or court order regarding the custody or care of the child;

(2) Detain the child within this state or remove the child from this state after the expiration of the noncustodial natural or adoptive parent or guardian's lawful period of visitation, with the intent to violate the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order regarding the custody or care of the child;

(3) Harbor or hide the child within or outside this state, knowing that possession of the child was unlawfully obtained by another person in violation of the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order;

(4) Act as an accessory to any act prohibited by this section; or

(5) Detain the child within or remove the child from this state during the noncustodial parent's lawful period of visitation, with the intent to violate the court-ordered visitation of the noncustodial parent, or a temporary or permanent judgment regarding visitation with the child.

(b) It is also the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of an incompetent person to:

(1) Remove the incompetent person from this state knowing that the removal violates a temporary or permanent judgment or a court order regarding the custody or care of the incompetent person;

(2) Harbor or hide the incompetent person within or outside this state, knowing that possession of the incompetent person was unlawfully obtained by another person in violation of a temporary or permanent judgment or a court order; or

(3) Act as an accessory to any act prohibited by this section.

(c) It is a defense to custodial interference:

(1) That the person who removed the child or incompetent person reasonably believed that, at the time the child or incompetent was removed, the failure to remove the child or incompetent person would have resulted in a clear and present danger to the health, safety, or welfare of the child or incompetent person; or

(2) That the individual detained or moved in contravention of the rightful custody of a mother as defined in § 36-2-303, or of the order of custody or care, was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(d) If conduct that is in violation of this section is also a violation of § 39-13-304 or § 39-13-305(a)(1), (a)(3), or (a)(4), the offense may be prosecuted under any of the applicable statutes.

(e)

(1) Except as provided in subdivision (e)(2), custodial interference is a Class E felony, unless the person taken from lawful custody is returned voluntarily by the defendant, in which case custodial interference is a Class A misdemeanor.

(2) Custodial interference under subdivision (a)(5) is a Class C misdemeanor.

39-13-307. Involuntary labor servitude -- Restitution.

(a) A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(1) Causing or threatening to cause serious bodily harm to the person;

(2) Physically restraining or threatening to physically restrain the person;

(3) Abusing or threatening to abuse the law or legal process;

(4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

(5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person; or

(6) Facilitating or controlling the person's access to an addictive controlled substance; or

(7) Controlling the person's movements through threats or violence.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

(1) The gross income or value to the defendant of the victim's labor or services; or

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), compiled in 29 U.S.C. § 201 et seq., or the minimum wage required in this state, whichever is higher.

(c) Nothing in this section shall be construed as prohibiting the defendant from also being prosecuted for the theft of the victim's labor or services by involuntary servitude or for any other appropriate criminal statute violated by the defendant's conduct.

(d)

(1) Involuntary servitude is a Class C felony.

(2) Involuntary servitude is a Class B felony if:

(A) The violation resulted in the serious bodily injury or death of a victim;

(B) The period of time during which the victim was held in servitude exceeded one (1) year;

(C) The defendant held ten (10) or more victims in servitude at any time during the course of the defendant's criminal episode; or

(D) The victim was under thirteen (13) years of age.

39-13-308. Trafficking for forced labor or services.

(a) A person commits the offense of trafficking persons for forced labor or services who knowingly:

(1) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to involuntary servitude; or

(2) Benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act described in § 39-13-307.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

(1) The gross income or value of the benefit received by the defendant as the result of the victim's labor or services; or

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), compiled in 29 U.S.C. § 201 et seq., or the minimum wage required in this state, whichever is higher.

(c) Trafficking for forced labor or services is a Class C felony.

39-13-309. Trafficking for commercial sex act.

(a) A person commits the offense of trafficking a person for a commercial sex act who:

(1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person's provision of a commercial sex act; or

(2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act.

(3) Commits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.

(b) For purposes of subdivision (a)(2), such means may include, but are not limited to:

(1) Causing or threatening to cause physical harm to the person;

(2) Physically restraining or threatening to physically restrain the person;

(3) Abusing or threatening to abuse the law or legal process;

(4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

(5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person; or

(6) Facilitating or controlling a person's access to a controlled substance.

(c) A violation of subsection (a) is a Class B felony, except where the victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000') of a public or private school,

secondary school, preschool, child care agency, public library, recreational center, or public park, a violation of subsection (a) is a Class A felony.

(d) It is not a defense to a violation of this section that:

(1) The intended victim of the offense is a law enforcement officer; or

(2) The victim of the offense is a minor who consented to the act or acts constituting the offense.

(3) The solicitation was unsuccessful, the conduct solicited was not engaged in, or the law enforcement officer could not engage in the solicited offense.

39-13-310. Separate Offenses – §§ 39-13-308 and 39-13-309.

Each violation of §§ 39-13-308 and 39-13-309 shall constitute a separate offense.

39-13-311. Violations by corporations.

A corporation may be prosecuted for a violation of §§ 39-13-308 and 39-13-309 for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent's employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

39-13-314. Offense of human trafficking.

(a) As used in this part, unless the context otherwise indicates:

(1) "Human trafficking offense" means the commission of any act that constitutes the criminal offense of:

(A) Involuntary labor servitude, under § 39-13-307;

(B) Trafficking persons for forced labor or services, under § 39-13-308;

(C) Trafficking for commercial sex act, under § 39-13-309; or

(D) Promoting the prostitution of a minor, under § 39-13-512; and

(2) "Trafficked person" means a victim of a human trafficking offense.

(b)

(1) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.

(2) A prevailing plaintiff is entitled to an award of attorney's fees and costs.

(c) Restitution under this section shall include items covered by the criminal injuries compensation fund under § 40-24-107 and any of the following, if not already covered by the court's restitution order:

(1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;

(2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;

(3) Attorney's fees and other court-related costs such as victim advocate fees;

(4) The greater of:

(A) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), compiled in 29 U.S.C. § 201 et seq., or state equivalent; or

(B) The gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation;

(5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;

(6) Compensation for emotional distress, pain, and suffering;

(7)

(A) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items;

(B) Expenses incurred pursuant to subdivision (c)(7)(A) shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;

(8) Repatriation of the victim to the victim's home country, if applicable; and

(9) Any and all other losses suffered by the victim as a result of human trafficking offenses.

(d)

(1) A legal guardian, family member, representative of the trafficked person or court appointee may represent the trafficked person or the trafficked person's estate if deceased.

(2) If the trafficked person dies as a result of a human trafficking offense, a surviving spouse of the trafficked person is eligible for restitution. If no surviving spouse exists, restitution shall be paid to the trafficked person's issue or their descendants per stirpes. If no surviving spouse, issue, or descendants exist, restitution shall be paid to the trafficked person's estate.

(e) A person named in this section may not receive any funds from restitution if such person engaged in violations of a human trafficking offense.

9-4-214. Victims of human trafficking fund.

(a) There is created a fund within the state treasury, to be known as the "victims of human trafficking fund." The fund consists of grants, appropriations by the general assembly, and any federal funds, to the extent permitted by federal law and regulation. Moneys deposited in the fund must be invested for the benefit of the fund pursuant to § 9-4-603. Moneys in the fund must not revert to the general fund, but must remain available to be used by the department of finance and administration's office of criminal justice programs exclusively for the purpose specified in subsection (b). The commissioner of the department of finance and administration has the authority to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in order to ensure the funds are received and expended for the purposes consistent with subsection (b).

(b) The purpose of the victims of human trafficking fund is to provide specialized comprehensive treatment and support services to the victims of human trafficking offenses, as defined in § 39-13-314. Specialized comprehensive treatment and support services for victims of human trafficking include, but are not limited to, medical care, mental health and substance abuse care, nutritional counseling, safe housing, job training, transportation, and other basic human needs. The department of finance and administration's office of criminal justice programs shall distribute moneys in the fund in the form of grants to agencies that provide specialized comprehensive treatment and support services for the victims of human trafficking. It is the legislative intent that priority for funding be directed to the single point of contact agencies in this state recognized by the Tennessee bureau of investigation and the department of children's services.

67-4-1202. Entry tax authorized for customers admitted to adult performance business. [Effective until July 1, 2021.]

(a) A two-dollar privilege tax, for state purposes only, is imposed for each entry by each customer admitted to an adult performance business. This tax is in addition to all other taxes imposed on the business.

(b) Each adult performance business shall record daily in the manner required by the department the number of customers admitted to the business. The business shall maintain the records for the period required by the department and make the records available for inspection and audit on request by the department.

(c) This section does not require an adult performance business to impose a tax on a customer of the business. A business has discretion to determine the manner in which the business derives the money required to pay the tax imposed under this section.

(d) All revenue collected from the tax imposed by this section shall be allocated to the general fund. It is the intent of the general assembly that an amount equal to the revenue collected from the tax be allocated to programs for victims of sex trafficking, subject to inclusion in the general appropriations act.

(e) This section is repealed on July 1, 2021, and no privilege tax shall be levied under this section on or after that date. This subsection (e) does not absolve any taxpayer of liability for any tax levied under this section prior to July 1, 2021.

39-13-501. Definitions.

As used in §§ 39-13-501— 39-13-511, except as specifically provided in § 39-13-505, unless the context otherwise requires:

(1) "Coercion" means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age;

(2) "Intimate parts" includes semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being;

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct;

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent;

(5) "Physically helpless" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act;

(6) "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification;

(7) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required; and

(8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.

39-13-502. Aggravated rape.

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) **A**ggravated rape is a Class A felony.

39-13-503. Rape.

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual penetration is accomplished by fraud.

(b) Rape is a Class B felony.

39-13-504. Aggravated sexual battery.

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

39-13-505. Sexual battery.

(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual contact is accomplished by fraud.

(b) As used in this section, "coercion" means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

(c) Sexual battery is a Class E felony.

39-13-506. Statutory rape.

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

(d)

(1) Mitigated statutory rape is a Class E felony.

(2)

(A) Statutory rape is a Class E felony.

(B) In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.

(C) Aggravated statutory rape is a Class D felony.

39-13-509. Sexual contact with a minor -- Sexual contact by an authority figure.

(a) It is an offense for a defendant to engage in unlawful sexual contact with a minor when:

(1) The minor is less than eighteen (18) years of age;

(2) The defendant is at least four (4) years older than the victim; and

(3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual contact; or

(4) The defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact.

(b) As used in this section, "sexual contact" means the defendant intentionally touches or kisses the minor's lips with the defendant's lips if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

(c) Sexual contact by an authority figure is a Class A misdemeanor with a mandatory minimum fine of one thousand dollars ($1,000).

(d) Each instance of unlawful sexual contact shall be considered a separate offense.

39-13-511. Indecent exposure.

(a)

(1) A person commits the offense of indecent exposure who:

(A) In a public place or on the private premises of another, or so near thereto as to be seen from the private premises:

(i) Intentionally:

a. Exposes the person's genitals or buttocks to another; or

b. Engages in sexual contact or sexual penetration as defined in § 39-13-501; and

(ii) Reasonably expects that the acts will be viewed by another and the acts:

a. Will offend an ordinary viewer; or

b. Are for the purpose of sexual arousal and gratification of the defendant; or

(B)

(i) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:

a. Exposure of such person's genitals, buttocks or female breasts; or

b. Masturbation; or

(ii) Knowingly engages in the person's own residence, in the intended presence of any child, for the defendant's sexual arousal or gratification the following intentional conduct:

a. Exposure of the person's genitals, buttocks or female breasts; or

b. Masturbation.

(2) No prosecution shall be commenced for a violation of subdivision (a)(1)(B)(ii)(*a*) based solely upon the uncorroborated testimony of a witness who shares with the accused any of the relationships described in § 36-3-601(5).

(3) For subdivision (a)(1)(B)(i) or (a)(1)(B)(ii) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.

(b)

(1) "Indecent exposure," as defined in subsection (a), is a Class B misdemeanor, unless subdivision (b)(2), (b)(3) or (b)(4) applies.

(2) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, indecent exposure is a Class A misdemeanor.

(3) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section or § 39-13-517, or is a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in § 40-39-202, the offense is a Class E felony.

(4) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the offense occurs on the property of any public school, private or parochial school, licensed day care center or other child care facility during a time at which a child or children are likely to be present on the property, the offense is a Class E felony.

(c)

(1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard or staff member:

(A) Intentionally exposes the person's genitals or buttocks to the guard or staff member; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c):

(A) "Guard" means any sheriff, jailer, guard, correctional officer, or other authorized personnel charged with the custody of the person; and

(B) "Staff member" means any other person employed by a penal institution or who performs ongoing services in a penal institution, including, but not limited to, clergy, educators, and medical professionals.

(3) Notwithstanding subsection (b), a violation of this subsection (c) is a Class A misdemeanor.

(d) This section does not apply to a mother who is breastfeeding her child in any location, public or private.

(e) As used in this section, "public place" means a place to which the public or a group of persons has access and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, places of business, playgrounds and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and a restroom, locker room, dressing room, or shower, designated for multi-person, single-sex use. An act is deemed to occur in a public place if it produces its offensive or proscribed consequences in a public place.

39-13-513. Prostitution -- Defenses.

(a) A person commits an offense under this section who engages in prostitution.

(b)

(1) Prostitution is a Class B misdemeanor.

(2) Prostitution committed within one hundred feet (100') of a church or within one and one-half (11/2) miles of a school, such distance being that established by § 49-6-2101, for state-funded school transportation, is a Class A misdemeanor.

(3) A person convicted of prostitution within one and one-half (11/2) miles of a school shall, in addition to any other authorized punishment, be sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars ($1,000).

(c) As used in subsection (b), "school" means all public and private schools that conduct classes in any grade from kindergarten through grade twelve (K-12).

(d) Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline and release the

minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

(e) It is a defense to prosecution under this section that a person charged with a violation of this section was so charged for conduct that occurred because the person was a victim of an act committed in violation of § 39-13-307 or § 39-13-309, or because the person was a victim as defined under the Trafficking Victims Protection Act (22 U.S.C. § 7102).

39-13-518. Continuous sexual abuse of a child -- Felony offense -- Penalties -- Notice identifying multiple acts of sexual abuse of a child.

(a) As used in this section:

(1) "Multiple acts of sexual abuse of a child" means:

(A)

(i) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014;

(ii) Engaging in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; or

(iii) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; and

(B) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (a)(1)(B) include, but are not limited to:

(i) The victims are related to the defendant by blood or marriage;

(ii) The victims reside with the defendant; or

(iii) The defendant was an authority figure, as defined in § 39-13-527(a)(3), to the victims and the victims knew each other; and

(2) "Sexual abuse of a child" means to commit an act upon a minor child that is a violation of:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-527;

(F) § 39-13-529(a);

(G) § 39-13-531; or

(H) § 39-13-532.

(b) A person commits continuous sexual abuse of a child who:

(1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(i) or (a)(1)(A)(ii); or

(2) Over a period of less than ninety (90) days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(iii).

(c)

(1) A violation of subsection (b) is a Class A felony if at least three (3) of the acts of sexual abuse of a child constitute violations of any of the following:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-529(a); or

(F) § 39-13-531.

(2) If one (1) of the three (3) or more violations under subdivision (c)(1) would be punished as a Class B felony if it were a single conviction, then the punishment for a violation of subsection (b) shall be a Class B felony.

(3) A violation of subsection (b) is a Class B felony if there are less than three (3) acts of sexual abuse of a child under the following subdivisions (c)(3)(A) -- (F) but there are at least three (3) acts under any combination of subdivision (c)(1) and this subdivision (c)(3):

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-529(a); or

(F) § 39-13-531.

(4) A violation of subsection (b) is a Class C felony if at least three (3) of the acts of sexual abuse of a child constitute violations of the following:

(A) § 39-13-527; or

(B) § 39-13-532.

(d) At least thirty (30) days prior to trial, the state shall file with the court a written notice identifying the multiple acts of sexual abuse of a child upon which the violation of this section is based. The notice shall include the identity of the victim and the statutory offense violated. Upon good cause, and where the defendant was unaware of the predicate offenses listed in the notice, the trial court may grant a continuance to facilitate proper notification of the incidents of sexual abuse of a child and for preparation by the defense of such incidents specified in the statement.

(e) The jury must agree unanimously that the defendant:

(1)

(A) During a period of ninety (90) or more days in duration, committed three (3) or more acts of sexual abuse of a child; or

(B) During a period of less than ninety (90) days in duration, committed five (5) or more acts of sexual abuse of a child against at least two (2) different children; and

(2) Committed at least three (3) of the same specific acts of sexual abuse within the specified time period if prosecution is under subdivision (e)(1)(A) and at least five (5) of the same specific acts of sexual abuse within the specified time period if prosecution is under subdivision (e)(1)(B).

(f) The state may charge alternative violations of this section and of the separate offenses committed within the same time period. The separate incidents shall be alleged in separate counts and joined in the same action. A person may be convicted either of one (1) criminal violation of this section, or for one (1) or more of the separate incidents of sexual abuse of a child committed within the county in which the charges were filed, but not both. The state shall not be required to elect submission to the jury of the several counts. The jury shall be instructed to return a verdict on all counts in the indictment. In the event that a verdict of guilty is returned on a separate count that was included in the notice of separate incidents of sexual abuse of a child and the jury returns a verdict of guilty for a violation of this section, at the sentencing hearing the trial judge shall merge the separate count into the conviction under this section and only impose a sentence under this section. A conviction for a violation of this section bars the prosecution of the individual incidents of sexual abuse of a child as separate offenses described in the pretrial notice filed by the state and presented to the jury. A prosecution for a violation of this section does not bar a prosecution in the same action for individual incidents of sexual abuse not identified in the state's pretrial notice. The state shall be required to elect as to those individual incidents of sexual abuse not contained in the pretrial notice prior to submission to the jury. A conviction for such elected offenses shall not be subject to merger at sentencing.

(g) Notwithstanding any other law to the contrary, a person convicted of a violation of this section shall be punished by imprisonment and shall be sentenced from within the full range of punishment for the offense of which the defendant was convicted, regardless of the range for which the defendant would otherwise qualify.

39-13-519. Forensic medical examination of victims of sexually oriented crime -- Protocol for collection and processing of sexual assault evidence kits and hold kits.

(a) As used in this section, unless the context otherwise requires:

(1) "Forensic medical examination" means an examination by any healthcare provider who provides medical care and gathers evidence of a sexually oriented crime in a manner suitable for use in a court of law, provided to a victim reporting a sexually oriented crime to a healthcare provider;

(2) "Hold kit" means a sexual assault evidence collection kit of an adult victim that is coded with a number rather than a name pending the victim's decision to report the crime to law enforcement authorities, and has not been submitted to the state crime lab or similar qualified laboratory

(3) "Law enforcement agency" means:

(A) An established state or local agency that:

(i) Is responsible and has the duty to prevent and detect crime and enforce laws or local ordinances; and

(ii) Has employees who are authorized to make arrests for crimes while acting within the scope of their authority; and

(B) A campus security force created by an institution of higher education pursuant to § 49-7-118;

(4) "Sexual assault evidence collection kit" means evidence collected from the victim of a sexually oriented crime with a sexual assault evidence collection kit provided by the state;

(5) "Sexually oriented crime" means those crimes listed in § 29-13-118(b); and

(6) "Victim" means a victim of a sexually oriented crime as defined in § 29-13-118(b).

(b) A victim of a sexually oriented crime is entitled to a forensic medical examination without charge to the victim as provided in § 29-13-118. Upon the conclusion of the forensic examination, the resulting sexual assault evidence collection kit or hold kit shall be released to a law enforcement agency by a healthcare provider for storage or transmission to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing.

(c)

(1) If an adult victim elects not to report the alleged offense to police at the time of the forensic medical examination, the sexual assault evidence collection kit becomes a hold kit, and the healthcare provider shall assign a number to identify the kit rather than use the victim's name. The healthcare provider shall provide the victim with the identifying number placed on the victim's hold kit, information about where and how long the kit will be stored, and the procedures for making a police report. The hold kit shall be released to the appropriate law enforcement agency for storage pursuant to subdivision (d)(2).

(2) If an adult victim reports the alleged offense to the police, or the victim is a minor, the healthcare provider shall attach the victim's name to the sexual assault evidence collection kit, and it shall be released to the appropriate law enforcement agency.

(d)

(1) The law enforcement agency shall, within sixty (60) days of taking possession of the sexual assault evidence collection kit with the victim's name affixed to it, submit the kit to the Tennessee bureau of investigation or similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing.

(2) Upon receipt of a hold kit with only an identification number attached to it, the law enforcement agency shall store the hold kit for a minimum of three (3) years or until the victim makes a police report, whichever event occurs first. Once the victim makes a police report, the law enforcement agency shall have sixty (60) days from the date of the police report to send the sexual assault evidence collection kit to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing. However, no hold kit shall be submitted to the state crime lab or similar laboratory for testing until the victim has made a police report.

39-13-520. Creation of model policy for handling, maintenance and testing of sexual assault evidence kits and hold kits.

(a) To provide for the implementation and efficient operation of § 39-13-519 and to ensure a uniform policy for the handling, maintenance, and testing of sexual assault evidence kits and hold kits, the domestic violence state coordinating council shall create a model policy for law enforcement agencies responding to reports of sexually oriented crimes.

(b) The model policy shall include guidelines for officers on:

(1) Investigating reports of sexually oriented crimes;

(2) Providing victim assistance;

(3) Collaborating with victim advocates, healthcare providers, and victim service agencies; and

(4) Collecting, storing, and submitting sexual assault evidence kits to the state crime lab or similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing.

(c) The model policy shall be distributed to all law enforcement agencies that are likely to encounter reports of sexually oriented crimes on or before January 1, 2016.

(d) All law enforcement agencies that are likely to encounter reports of sexually oriented crimes shall establish written policies and procedures on responding to reports of sexually oriented crimes. An agency may adopt the model policy developed by the domestic violence state coordinating council or an agency may adopt its own policy; provided, that the policy includes the same or higher standards as the model policy developed by the council. Each agency shall adopt its written policy on or before July 1, 2016.

39-13-521. HIV testing of persons convicted of sexual offenses -- Release of test results.

(a) When a person is initially arrested for violating § 39-13-502, § 39-13-503, § 39-13-506, § 39-13-522, § 39-13-531 or § 39-13-532 that person shall undergo human immunodeficiency virus (HIV) testing immediately, or not later than forty-eight (48) hours after

the presentment of the information or indictment, with or without the request of the victim. A licensed medical laboratory shall perform the test at the expense of the person arrested. The person arrested shall obtain a confirmatory test when necessary and shall be referred to appropriate counseling.

(b)

(1) The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim.

(2) The result of any HIV test required under this section is not a public record and shall be available only to:

(A) The victim;

(B) The parent or guardian of a minor or incapacitated victim;

(C) The attending physician of the person tested and of the victim;

(D) The department of health;

(E) The department of correction;

(F) The person tested; and

(G) The district attorney general prosecuting the case.

(c) If the arrestee is convicted, the court shall review the HIV test results prior to sentencing.

(d)

(1) For purposes of this section, "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(2) For purposes of this section, "HIV test" means a test of an individual for the presence of human immunodeficiency virus, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of health shall promulgate rules designating the proper test method to be used for this purpose.

(3) Nothing in this section shall be construed to require the actual transmission of HIV in order for the court to consider it as a mandatory enhancement factor.

(e) Upon the conviction of the defendant for a violation of § 39-13-513, § 39-13-514 or § 39-13-515, the court shall order the convicted person to submit to an HIV test. The test shall be performed by a licensed medical laboratory at the expense of the defendant. The defendant shall obtain a confirmatory test when necessary. The defendant shall be referred to appropriate counseling. The defendant shall return a certified copy of the results of all tests to the court. The court shall examine results in camera and seal the record. For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding the provisions of subdivision (b)(2). The district attorney general shall be required to file a written, signed request with the court stating the reason the court should grant permission for the district attorney general to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test in a prosecution for aggravated prostitution.

39-13-522. Rape of a child. [Effective until July 1, 2020. See the version effective on July 1, 2020.]

(a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.

(b)

(1) Rape of a child is a Class A felony.

(2)

(A) Notwithstanding title 40, chapter 35, a person convicted of a violation of this section shall be punished as a Range II offender; however, the sentence imposed upon such person may, if appropriate, be within Range III but in no case shall it be lower than Range II.

(B) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2).

(C) Notwithstanding any law to the contrary, the board of parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.

39-13-523. Punishment for certain sex offenders.

(a) As used in this section, unless the context otherwise requires:

(1) "Aggravated rapist" means a person convicted of violating § 39-13-502;

(2) "Child rapist" means a person convicted one (1) or more times of rape of a child as defined by § 39-13-522;

(3) "Child sexual predator" means a person who:

(A) Is convicted in this state of committing an offense on or after July 1, 2007, that is classified in subdivision (a)(5) as a predatory offense; and

(B) Has one (1) or more prior convictions for an offense classified in subdivision (a)(5) as a predatory offense;

(4) "Multiple rapist" means a person convicted two (2) or more times of violating § 39-13-503, or a person convicted at least one (1) time of violating § 39-13-502 and at least one (1) time of violating § 39-13-503;

(5) "Predatory offenses" means:

(A) Aggravated sexual battery under § 39-13-504(a)(4);

(B) Statutory rape by an authority figure under § 39-13-532;

(C) Sexual battery by an authority figure under § 39-13-527;

(D) Solicitation of a minor to commit a sex offense under § 39-13-528;

(E) Solicitation of a minor to perform sex acts under § 39-13-529; and

(F) Aggravated statutory rape under § 39-13-506(c);

(6)

(A) "Prior convictions" means that the person serves and is released or discharged from a separate period of incarceration or supervision for the commission of a predatory offense classified in subdivision (a)(5) prior to committing another predatory offense classified in subdivision (a)(5).

(B) "Prior convictions" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a predatory offense as classified in subdivision (a)(5). If a felony from a jurisdiction other than Tennessee is not a named predatory offense as classified in subdivision (a)(5) in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for an offense classified as a predatory offense; and

(7) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104 (c)(3)-(9). Any offense designated as a predatory offense pursuant to subdivision (a)(5) shall be considered as having been committed after a separate period of incarceration or supervision if the predatory offense was committed while the person was:

(A) On probation, parole or community correction supervision for a predatory offense;

(B) Incarcerated for a predatory offense;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a predatory offense; or

(D) On escape status from any correctional institution when incarcerated for a predatory offense;

(b) Notwithstanding any other law to the contrary, a child sexual predator, aggravated rapist, multiple rapist or a child rapist shall be required to serve the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. A child sexual predator, aggravated rapist, multiple rapist or a child rapist shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(c) Title 40, chapter 35, part 5, regarding release eligibility status and parole, shall not apply to or authorize the release of a child sexual predator, aggravated rapist, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.

(d) Nothing in title 41, chapter 1, part 5 shall give either the governor or the board of parole the authority to release or cause the release of a child sexual predator, aggravated rapist, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.

(e)

(1) The provisions of this section requiring child sexual predators to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 2007.

(2) The provisions of this section requiring multiple rapists to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 1992.

(3) The provisions of this section requiring aggravated rapists to serve the entire sentence imposed by the court shall only apply if the required offense occurs on or after July 1, 2012.

39-13-524. Sentence of community supervision for life.

(a) In addition to the punishment authorized by the specific statute prohibiting the conduct, a person shall receive a sentence of community supervision for life who, on or after:

(1) July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, or § 39-13-522;

(2) July 1, 2010, commits a violation of § 39-13-531; or

(3) The applicable date as provided in subdivision (a)(1) or (a)(2) attempts to commit a violation of any of the sections enumerated in subdivision (a)(1) or (a)(2).

(b) The judgment of conviction for all persons to whom subsection (a) applies shall include that the person is sentenced to community supervision for life.

(c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon the person by the court or upon the person's release from regular parole supervision, whichever first occurs.

(d)

(1) A person on community supervision shall be under the jurisdiction, supervision and control of the department of correction in the same manner as a person under parole supervision. The department is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from the person's committing a new sex offense, as well as promoting the rehabilitation of the person.

(2) The department is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision similar to the fee imposed by § 40-28-201. To the extent possible, the department shall set the fee in an amount that will substantially defray the cost of the community supervision program. The department shall also establish a fee waiver procedure for hardship cases and indigency.

39-13-527. Sexual battery by an authority figure.

(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less then eighteen (18) years of age; or

(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,

(3)

(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

(b) Sexual battery by an authority figure is a Class C felony.

39-13-528. Offense of solicitation of a minor.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

(1) Rape of a child, pursuant to § 39-13-522;

(2) Aggravated rape, pursuant to § 39-13-502;

(3) Rape, pursuant to § 39-13-503;

(4) Aggravated sexual battery, pursuant to § 39-13-504;

(5) Sexual battery by an authority figure, pursuant to § 39-13-527;

(6) Sexual battery, pursuant to § 39-13-505;

(7) Statutory rape, pursuant to § 39-13-506;

(8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(9) Sexual activity involving a minor, pursuant to § 39-13-529;

(10) Trafficking for commercial sex acts, pursuant to § 39-13-309;

(11) Patronizing prostitution, pursuant to § 39-13-514;

(12) Promoting prostitution, pursuant to § 39-13-515; or

(13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

(b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

39-13-529. Offense of soliciting sexual exploitation of a minor — Exploitation of a minor by electronic means.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in simulated sexual activity that is patently offensive or in sexual activity, where such simulated sexual activity or sexual activity is observed by that person or by another.

(b) It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or internet service, including webcam communications, to intentionally:

(1) Engage in simulated sexual activity that is patently offensive or in sexual activity for the purpose of having the minor view the simulated sexual activity or sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, internet service and webcam communications;

(2) Display to a minor, or expose a minor to, any material containing simulated sexual activity that is patently offensive or sexual activity if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; or

(3) Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing simulated sexual activity that is patently offensive or sexual activity, if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.

(4)

(A) Except as provided in subdivision (b)(4)(B), it is an exception to the application of this subsection (b) that the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is no more than four (4) years older than the victim.

(B) Subdivision (b)(4)(A) shall not apply or be an exception to the application of this subsection (b), if the defendant intentionally commanded, hired, induced or caused the victim to violate this subsection (b).

(c) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state or the solicitation of a law enforcement officer posing as a minor located in this state.

(d) As used in this section:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval; or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

(3) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters; and

(4) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

(e)

(1) A violation of subsection (a) is a Class B felony.

(2) A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.

(f) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

39-13-530. Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors — Child abuse fund.

(a)

(1) Any conveyance or real or personal property used in the commission of an offense under this part, is subject to judicial forfeiture under chapter 11, part 7 of this title; provided, however, that the offense is committed against a person under eighteen (18) years of age and was committed on or after July 1, 2006.

(2) Any conveyance or personal property used in the commission of a violation of § 40-39-211 committed on or after July 1, 2012, by a sexual offender or violent sex offender, as defined in § 40-39-202, whose victim was a minor, is, upon conviction, subject to judicial forfeiture as provided in chapter 11, part 7 of this title.

(b) The proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.

(c) The general assembly shall appropriate, through the general appropriations act, fifty percent (50%) of the moneys from the child abuse fund to the department of finance and administration for the child advocacy center fund to be used for child advocacy centers. The appropriations shall be specifically earmarked for the purposes set out in subsection (d).

(d) All moneys appropriated from the child advocacy center fund shall be used exclusively by the department to provide grants to child advocacy centers that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code, and that have provided child advocacy services for at least six (6) months prior to the application for funds under this subsection (d). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel in child advocacy centers.

(e) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the court appointed special advocate (CASA) fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (f).

(f) All moneys appropriated from the CASA fund shall be used exclusively by the department to provide grants to CASA programs that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code and that have provided CASA services for at least six (6) months prior to the application for funds under this subsection (f). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel and volunteers in CASA programs.

(g) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the child abuse prevention fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (h).

(h) All moneys appropriated from the child abuse prevention fund shall be used exclusively by the department to provide a grant to Prevent Child Abuse Tennessee; provided, that it is incorporated as a not-for-profit organization, is tax-exempt under § 501 of the Internal Revenue Code (26 U.S.C. § 501), and that it has provided child abuse prevention services for at least six (6) months prior to the application for funds under this subsection (h). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act for the distribution and use of the grant funds provided by it. The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel to plan and carry out a comprehensive statewide child abuse prevention program that includes emphasis on primary and secondary prevention strategies and includes evaluation strategies to assess the effectiveness of prevention activities.

(i) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall collaborate with each other and also with the department of children's services, the department of children's services' child abuse prevention advisory committee, the child sexual abuse task force established by § 37-1-603(b)(1), the commission on children and youth, the governor's office of children's care coordination, and other appropriate state and local service providers in the planning and implementation of multi-disciplinary, multi-agency approaches to address child abuse, including primary, secondary and tertiary child abuse prevention, investigation and intervention in child abuse cases, and needed treatment and timely permanency for victims of child abuse.

(j) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall report annually to the health and welfare and judiciary committees of the senate, the committee of the house of representatives having oversight over children and families, and the fiscal review committee, regarding their use of child abuse fund moneys, their collaborative efforts to address the spectrum of child abuse issues, and their recommendations for additional improvements in the child abuse prevention and response system in Tennessee.

39-13-531. Aggravated rape of a child. [Effective until July 1, 2020. See the version effective on July 1, 2020.]

(a) Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is three (3) years of age or less.

(b)

(1) Aggravated rape of a child is a Class A felony.

(2) The applicable sentencing provisions of title 40, chapter 35, apply to the offense prohibited by this section except:

(A) A sentencing hearing shall not be conducted as required by § 40-35-209; and

(B) After a defendant is found guilty of aggravated rape of a child, the judge shall sentence the defendant to imprisonment for life without the possibility of parole.

39-13-531. Aggravated rape of a child. [Effective on July 1, 2020. See the version effective until July 1, 2020.]

(a) Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is eight (8) years of age or less.

(b)

(1) Aggravated rape of a child is a Class A felony.

(2) The applicable sentencing provisions of title 40, chapter 35, apply to the offense prohibited by this section except:

(A) A sentencing hearing shall not be conducted as required by § 40-35-209; and

(B) After a defendant is found guilty of aggravated rape of a child, the judge shall sentence the defendant to imprisonment for life without the possibility of parole.

39-13-532. Statutory rape by an authority figure.

(a) Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than eighteen (18) years of age;

(2) The defendant is at least four (4) years older than the victim; and

(3)

(A) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim by virtue of the defendant's legal, professional, or occupational status and used the position to accomplish the sexual penetration.

(b) Statutory rape by an authority figure is a Class B felony.

(c) No person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to § 40-35-303 or judicial diversion pursuant to § 40-35- 313.

39-13-605. Unlawful photographing in violation of privacy.

(a) It is an offense for a person to knowingly photograph, or cause to be photographed an individual, when the individual has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, if the photograph:

(1) Would offend or embarrass an ordinary person if such person appeared in the photograph; and

(2) Was taken for the purpose of sexual arousal or gratification of the defendant.

(b)

(1) As used in this section, unless the context otherwise requires, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission of any individual.

(2) As used in this section, an individual has a reasonable expectation of privacy, regardless of the location where a photograph is taken, if:

(A) The photograph is taken in a manner that would offend or embarrass a reasonable person; and

(B) The photograph depicts areas of the individual's body, clothed or unclothed, that would not be visible to ordinary observation but for the offensive or embarrassing manner of photography.

(c) All photographs taken in violation of this section shall be confiscated and, after their use as evidence, destroyed.

(d)

(1) A violation of this section is a Class A misdemeanor.

(2) A violation of this section is a Class E felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to any other person; or

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(3) A violation of this section is a Class D felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to any other person; and

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(e) Nothing in this section shall preclude the state from electing to prosecute conduct in violation of this section under any other applicable section, including chapter 17, parts 9 and 10 of this title.

(f) In addition to the punishment provided for a person who commits the misdemeanor unlawful photographing in violation of privacy, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, compiled in title 40, chapter 39, part 2.

39-13-701. Short title.

This part shall be known and may be cited as the "Tennessee Standardized Treatment Program for Sex Offenders."

39-13-706. Treatment and monitoring of offenders.

(a) Each sex offender sentenced by the court for an offense committed on or after January 1, 1996, is required, as a part of any sentence to probation, community corrections, or incarceration with the department of correction, to undergo treatment to the extent appropriate to the offender based upon the recommendations of the evaluation and identification made pursuant to § 39-13-705, or based upon any subsequent recommendations by the department of correction, the judicial branch or the department of children's services, whichever is appropriate. Any treatment and monitoring shall be at the person's own expense, based upon the person's ability to pay for the treatment.

(b) Each sex offender placed on parole by the state board of parole on or after January 1, 1996, is required, as a condition of parole, to undergo treatment to the extent appropriate to the offender based upon the recommendations of the evaluation and identification

pursuant to § 39-13-705 or any evaluation or subsequent reevaluation regarding the person during the person's incarceration or any period of parole. Any treatment shall be at the person's expense, based upon the person's ability to pay for such treatment.

39-14-406. Aggravated criminal trespass.

(a) A person commits aggravated criminal trespass who enters or remains on property when:

(1) The person knows the person does not have the property owner's effective consent to do so; and

(2) The person intends, knows, or is reckless about whether such person's presence will cause fear for the safety of another; or

(3) The person, in order to gain entry to the property, destroys, cuts, vandalizes, alters or removes a gate, signage, fencing, lock, chain or other barrier designed to keep trespassers from entering the property.

(b) For purposes of this section, "enter" means intrusion of the entire body.

(c) Aggravated criminal trespass is a Class B misdemeanor unless it was committed in a habitation, in a building of any hospital, or on the campus, property, or facilities of any private or public school, in which event it is a Class A misdemeanor.

(d)

(1) A person also commits aggravated criminal trespass who enters or remains on the real property, including the right-of-way, of a railroad:

(A) With the intent to do harm to the property or to railroad property located on the property; or

(B) With the intent to do harm to another person or knowing that their presence will harm another person.

(2) Aggravated criminal trespass on railroad property is a Class A misdemeanor

(e)

(1) A person also commits aggravated criminal trespass who trespasses upon a construction site, or property used or owned by a public or private utility or an electric or telephone cooperative, with the intent to steal, deface, destroy, tamper with, alter or remove any equipment, supplies or other property found on the site or property.

(2)

(A) In order for subdivision (e)(1) to apply, the construction, utility, or electric or telephone cooperative property must be posted by use of a sign of a size that is plainly visible to the average person at all gates or entrances to the property and shall contain language substantially similar to the following:

UNLAWFUL ENTRY ON THIS PROPERTY CONSTITUTES THE CRIMINAL OFFENSE OF AGGRAVATED CRIMINAL TRESPASS AND IS PUNISHABLE BY IMPRISONMENT FOR UP TO ONE YEAR AND A $2,500 FINE.

(B) If the proof shows that the defendant entered the posted property at some place other than a gate or entrance, it is not a defense to this subsection (e) that the defendant did not know that the property was posted against trespass

(3) Aggravated criminal trespass on a construction site is a Class A misdemeanor.

39-15-210. Child Rape Protection Act of 2006.

(a) This section shall be known and may be cited as the "Child Rape Protection Act of 2006.

(b)

(1) When a physician has reasonable cause to report the sexual abuse of a minor pursuant to § 37-1-605, because the physician has been requested to perform an abortion on a minor who is less than thirteen (13) years of age, the physician shall, at the

time of the report, also notify the official to whom the report is made of the date and time of the scheduled abortion and that a sample of the embryonic or fetal tissue extracted during the abortion will be preserved and available to be turned over to the appropriate law enforcement officer conducting the investigation into the rape of the minor.

(2) If a minor who is at least thirteen (13) but no more than seventeen (17) years of age requests a physician to perform an abortion and the physician has reasonable cause to believe there is child sexual abuse involved as defined by § 37-1-602, the physician shall report the abuse pursuant to § 37-1-605. This subdivision (b)(2) shall apply only when a physician performs elective abortion services as a part of their practice.

(c)

(1) In the transmission of the embryonic or fetal tissue sample to the appropriate law enforcement officer, in order to protect the identity and privacy of the minor, all identifying information concerning the minor shall be treated as confidential and shall not be released to anyone other than the investigating and prosecuting authorities directly involved in the case of the particular minor.

(2) Where the minor has obtained a judicial waiver of the parental notification requirements pursuant to title 37, chapter 10, part 3, confidentiality shall be maintained as provided in that part.

(d) It is an offense for a physician licensed or certified under title 63, chapter 6 or 9, or other person to knowingly fail to comply with this section or any rule or regulation adopted pursuant to this section.

(1) A first violation of this section is a civil penalty to be assessed by the provider's health related board of not less than five hundred dollars ($500);

(2) A second violation of this section is a civil penalty to be assessed by the provider's health related board of not less than one thousand dollars ($1,000); and

(3) A third or subsequent violation of this section is a Class A misdemeanor.

(e) If the person performing the abortion is a physician licensed or certified under title 63, chapter 6 or 9, the violation constitutes unprofessional conduct. The conduct subjects the physician, in addition to the penalties set out in subsection (d), to disciplinary action.

39-15-401. Child abuse and child neglect or endangerment.

(a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury commits a Class A misdemeanor; provided, however, that, if the abused child is eight (8) years of age or less, the penalty is a Class D felony.

(b) Any person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare, commits a Class A misdemeanor; provided, that, if the abused or neglected child is eight (8) years of age or less, the penalty is a Class E felony.

(c)

(1) A parent or custodian of a child eight (8) years of age or less commits child endangerment who knowingly exposes such child to or knowingly fails to protect such child from abuse or neglect resulting in physical injury or imminent danger to the child.

(2) For purposes of this subsection (c):

(A) “Imminent danger” means the existence of any condition or practice that could reasonably be expected to cause death or serious bodily injury;

(B) “Knowingly” means the person knew, or should have known upon a reasonable inquiry, that abuse to or neglect of the child would occur which would result in physical injury to the child. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary parent or legal custodian of a child eight (8) years of age or less would exercise under all the circumstances as viewed from the defendant’s standpoint; and

(C) "Parent or custodian" means the biological or adoptive parent or any person who has legal custody of the child.

(3) A violation of this subsection (c) is a Class A misdemeanor

(d)

(1) Any court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court, either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue the warrant or summons, nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a), based upon the allegation that unreasonable corporal punishment was administered to the child, unless the affidavit of complaint also contains a copy of the report prepared by the law enforcement official who investigated the allegation, or independent medical verification of injury to the child

(2)

(A) As provided in this subdivision (d)(2), juvenile courts, courts of general session, and circuit and criminal courts, shall have concurrent jurisdiction to hear violations of this section.

(B) If the person pleads not guilty, the juvenile judge or general sessions judge shall have the power to bind the person over to the grand jury, as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and, notwithstanding § 40-13-103, a prosecutor need not be named on the indictment.

(C) On a plea of not guilty, the juvenile court judge or general sessions judge shall have the power to proceed to hear the case on its merits, without the intervention of a jury, if the person requests a hearing in juvenile court or general sessions court and expressly waives, in writing, indictment, presentment, grand jury investigation and a jury trial.

(D) If the person enters a plea of guilty, the juvenile court or general sessions court judge shall sentence the person under this section.

(E) Regardless of whether the person pleads guilty or not guilty, the circuit court or criminal court shall have the power to proceed to hear the case on its merits, and, if found guilty, to sentence the person under this section.

(e) Except as expressly provided, this section shall not be construed as repealing any provision of any other statute, but shall be supplementary to any other provision and cumulative of any other provision.

(f) A violation of this section may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense, if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101 or § 39-13-102, or both.

(g) For purposes of this section, "adversely affect the child's health and welfare" may include, but not be limited to, the natural effects of starvation or dehydration or acts of female genital mutilation as defined in § 39-13-110.

(h) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through internet services or social networking websites; provided, that the person has no parental rights to such victim at the time of the court's order.

39-15-402. Haley's Law — Aggravated child abuse and aggravated child neglect or endangerment — Definitions.

(a) A person commits the offense of aggravated child abuse, aggravated child neglect or aggravated child endangerment, who commits child abuse, as defined in § 39-15-401(a); child neglect, as defined in § 39-15-401(b); or child endangerment, as defined in § 39-15-401(c) and:

(1) The act of abuse, neglect or endangerment results in serious bodily injury to the child;

(2) A deadly weapon, dangerous instrumentality, controlled substance or controlled substance analogue is used to accomplish the act of abuse, neglect or endangerment;

(3) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim; or

(4) The act of abuse, neglect or endangerment results from the knowing exposure of a child to the initiation of a process intended to result in the manufacture of methamphetamine as described in § 39-17-435.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) "Serious bodily injury to the child" includes, but is not limited to, second- or third-degree burns, a fracture of any bone, a concussion, subdural or subarachnoid bleeding, retinal hemorrhage, cerebral edema, brain contusion, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by whipping children with objects and acts of female genital mutilation as defined in § 39-13-110.

(d) A "dangerous instrumentality" is any item that, in the manner of its use or intended use as applied to a child, is capable of producing serious bodily injury to a child, as serious bodily injury to a child is defined in this section

(e) This section shall be known and may be cited as "Haley's Law".

(f) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of aggravated child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through internet services or social networking websites; provided, that the person has no parental rights to such victim at the time of the court's order.

39-16-408. Sexual contact with inmates.

(a) For purposes of this section, unless the context otherwise requires:

(1) "Law enforcement officer" and "correctional employee" include a person working in that capacity as a private contractor or employee of a private contractor; and

(2) "Volunteer" means any person who, after fulfilling the appropriate policy requirements, is assigned to a volunteer job and provides a service without pay from the correctional agency, except for compensation for those expenses incurred directly as a result of the volunteer service.

(b) It is an offense for a law enforcement officer, correctional employee, vendor or volunteer to engage in sexual contact or sexual penetration, as such terms are defined in § 39-13-501, with a prisoner or inmate who is in custody at a penal institution as defined in § 39-16-601, whether the conduct occurs on or off the grounds of the institution.

(c) A violation of this section is a Class E felony.

39-16-507. Coercion or persuasion of witness.

(a) A person commits an offense who, by means of coercion, influences or attempts to influence a witness or prospective witness in an official proceeding with intent to influence the witness to:

(1) Testify falsely;

(2) Withhold any truthful testimony, truthful information, document or thing; or

(3) Elude legal process summoning the witness to testify or supply evidence, or to be absent from an official proceeding to which the witness has been legally summoned.

(b) A violation of this section is a Class D felony.

(c) A defendant in a criminal case involving domestic assault, pursuant to § 39-13-111, or a person acting at the direction of the defendant, commits an offense who, by any means of persuasion that is not coercion, intentionally influences or attempts to influence a witness or prospective witness in an official proceeding to:

(1) Testify falsely;

(2) Withhold any truthful testimony, information, document, or evidence; or

(3) Elude legal process summoning the witness to testify or supply evidence, or to be absent from an official proceeding to which the witness has been legally summoned.

(d) A violation of subsection (c) is a Class A misdemeanor and, upon conviction, the sentence runs consecutively to the sentence for any other offense that is based in whole or in part on the factual allegations about which the person was seeking to influence a witness.

(e) Nothing in this section shall operate to impede the investigative activities of an attorney representing a defendant.

39-17-308. Harassment.

(a) A person commits an offense who intentionally:

(1) Communicates a threat to another person, and the person communicating the threat:

(A) Intends the communication to be a threat of harm to the victim; and

(B) A reasonable person would perceive the communication to be a threat of harm;

(2) Communicates with another person without lawful purpose, anonymously or otherwise, with the intent that the frequency or means of the communication annoys, offends, alarms, or frightens the recipient and, by this action, annoys, offends, alarms, or frightens the recipient;

(3) Communicates to another person, with intent to harass that person, that a relative or other person has been injured or killed when the communication is known to be false; or

(4) Communicates with another person or transmits or displays an image without legitimate purpose with the intent that the image is viewed by the victim by any method described in subdivision (a)(1) and the person:

(A) Maliciously intends the communication to be a threat of harm to the victim; and

(B) A reasonable person would perceive the communication to be a threat of harm.

(b)

(1) A person convicted of a criminal offense commits an offense if, while incarcerated, on pretrial diversion, probation, community correction or parole, the person intentionally communicates in person with the victim of the person's crime if the communication is:

(A) Anonymous or threatening or made in an offensively repetitious manner or at hours known to be inconvenient to the victim;

(B) Made for no legitimate purpose; and

(C) Made knowing that it will alarm or annoy the victim.

(2) If the victim of the person's offense died as the result of the offense, this subsection (b) shall apply to the deceased victim's next-of-kin.

(c)

(1) Except as provided in subsection (d), a violation of subsection (a) is a Class A misdemeanor.

(2) A violation of subsection (b) is a Class E felony.

(d) A violation by a minor of subdivision (a)(4) is a delinquent act and shall be punishable only by up to thirty (30) hours of community service, without compensation, for charitable or governmental agencies as determined by the court.

(e) As used in this section:

(1) "Communicate" means contacting a person in writing or print or by telephone, wire, radio, electromagnetic, photoelectronic, photooptical, or electronic means, and includes text messages, facsimile transmissions, electronic mail, instant messages, and messages, images, video, sound recordings, or intelligence of any nature sent through or posted on social networks, social media, or websites;

(2) "Electronic communications service" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system;

(3) "Image" includes, but is not limited to, a visual depiction, video clip or photograph of another person;

(4) "Log files" mean computer-generated lists that contain various types of information regarding the activities of a computer, including, but not limited to, time of access to certain records, processes running on a computer or the usage of certain computer resources; and

(5) "Social network" means any online community of people who share interests and activities, or who are interested in exploring the interests and activities of others, and which provides ways for users to interact.

(f)

(1) The offense described in this section shall not apply to an entity providing an electronic communications service to the public acting in the normal course of providing that service.

(2) The service providers described in this subsection (f) shall not be required to maintain any record not otherwise kept in the ordinary course of that service provider's business; provided, however, that if any electronic communications service provider operates a website that offers a social network service and the electronic communications service provider provides services to consumers in this state, any log files and images or communications that have been sent, posted, or displayed on the social network service's website and maintained by the electronic communications service provider shall be disclosed to any governmental entity responsible for enforcing this section only if the governmental entity:

(A) Obtains a warrant issued using this state's warrant procedures by a court of competent jurisdiction;

(B) Obtains a court order for the disclosure under subdivision (f)(4); or

(C) Has the consent of the person who sent, posted, or displayed any log files and images or communications on the social network service's website maintained by the electronic communications service provider.

(3) No cause of action shall lie in any court against any provider of an electronic communications service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or warrant.

(4) A court order for disclosure under subdivision (f)(2)(B) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of an electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. A court order shall not issue if prohibited by the law of this state. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

39-17-315. Stalking, aggravated stalking, and especially aggravated stalking.

(a) As used in this section, unless the context otherwise requires:

(1) “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate, noncontinuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property;

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(3) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

(4) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;

(5) “Unconsented contact” means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(A) Following or appearing within the sight of that person;

(B) Approaching or confronting that person in a public place or on private property;

(C) Appearing at that person's workplace or residence;

(D) Entering onto or remaining on property owned, leased, or occupied by that person;

(E) Contacting that person by telephone;

(F) Sending to that person mail or any electronic communications, including, but not limited to, electronic mail, text messages, or any other type of electronic message sent using the internet, websites, or a social media platform; or

(G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person; and

(6) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b)

(1) A person commits an offense who intentionally engages in stalking.

(2) Stalking is a Class A misdemeanor.

(3) Stalking is a Class E felony if the defendant, at the time of the offense, was required to or was registered with the Tennessee bureau of investigation as a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in § 40-39-202.

(c)

(1) A person commits aggravated stalking who commits the offense of stalking as prohibited by subsection (b), and:

(A) In the course and furtherance of stalking, displays a deadly weapon;

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct, and the person is five (5) or more years older than the victim;

(C) Has previously been convicted of stalking within seven (7) years of the instant offense;

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

(2) Aggravated stalking is a Class E felony.

(d)

(1) A person commits especially aggravated stalking who:

(A) Commits the offense of stalking or aggravated stalking, and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense;

(B) Commits the offense of aggravated stalking, and intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent; or

(C) Commits the offense of stalking or aggravated stalking, the person is eighteen (18) years of age or older, and the victim of the offense was less than twelve (12) years of age at any time during the person's course of conduct.

(2) Especially aggravated stalking is a Class C felony.

(e) Notwithstanding any other law, if the court grants probation to a person convicted of stalking, aggravated stalking or especially aggravated stalking, the court may keep the person on probation for a period not to exceed the maximum punishment for the appropriate classification of offense. Regardless of whether a term of probation is ordered, the court may, in addition to any other punishment otherwise authorized by law, order the defendant to do the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling, and, if determined appropriate by the court, to receive psychiatric, psychological or social counseling at the defendant's own expense;

(4) If, as the result of such treatment or otherwise, the defendant is required to take medication, order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and

(5) Submit to the use of an electronic tracking device, with the cost of the device and monitoring the defendant's whereabouts, to be paid by the defendant.

(f) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(g)

(1) If a person is convicted of aggravated or especially aggravated stalking, or another felony offense arising out of a charge based on this section, the court may order an independent professional mental health assessment of the defendant's need for mental health treatment. The court may waive the assessment, if an adequate assessment was conducted prior to the conviction.

(2) If the assessment indicates that the defendant is in need of and amenable to mental health treatment, the court may include in the sentence a requirement that the offender undergo treatment, and that the drug intake of the defendant be monitored in the manner best suited to the particular situation. Monitoring may include periodic determinations as to whether the defendant is ingesting any illegal controlled substances or controlled substance analogues, as well as determinations as to whether the defendant is complying with any required or recommended course of treatment that includes the taking of medications.

(3) The court shall order the offender to pay the costs of assessment under this subsection (g), unless the offender is indigent under § 40-14-202.

(h) Any person who reasonably believes they are a victim of an offense under this section, regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner, and under the same circumstances, as is provided for victims of domestic abuse by title 36, chapter 3, part 6.

(i) When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim that the person arrested may be eligible to post bail for the offense and to be released until the date of trial for the offense

(j) If a law enforcement officer or district attorney general believes that the life of a possible victim of stalking is in immediate danger, unless and until sufficient evidence can be processed linking a particular person to the offense, the district attorney general may petition the judge of a court of record having criminal jurisdiction in that district to enter an order expediting the processing of any evidence in a particular stalking case. If, after hearing the petition, the court is of the opinion that the life of the victim may be in immediate danger if the alleged perpetrator is not apprehended, the court may enter such an order, directed to the Tennessee bureau of investigation, or any other agency or laboratory that may be in the process of analyzing evidence for that particular investigation.

(k)

(1) For purposes of determining if a course of conduct amounting to stalking is a single offense or multiple offenses, the occurrence of any of the following events breaks the continuous course of conduct, with respect to the same victim, that constitutes the offense:

(A) The defendant is arrested and charged with stalking, aggravated stalking or especially aggravated stalking;

(B) The defendant is found by a court of competent jurisdiction to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or

(C) The defendant is convicted of the offense of stalking, aggravated stalking or especially aggravated stalking.

(2) If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the events set out in subdivision (k)(1), any such conduct that occurs after that event commences a new and separate offense.

(l) Stalking may be prosecuted pursuant to § 39-11-103(d).

39-17-318. Unlawful exposure.

(a) A person commits unlawful exposure who, with the intent to cause emotional distress, distributes an image of the intimate part or parts of another identifiable person if:

(1) The image was photographed or recorded under circumstances where the parties agreed or understood that the image would remain private; and

(2) The person depicted in the image suffers emotional distress.

(b) As used in this section:

(1) "Emotional distress" has the same meaning as defined in § 39-17-315; and

(2) "Intimate part" means any portion of the primary genital area, buttock, or any portion of the female breast below the top of the areola that is either uncovered or visible through less than fully opaque clothing.

(c) Nothing in this section precludes punishment under any other section of law providing for greater punishment.

(d) A violation of subsection (a) is a Class A misdemeanor.

39-17-909. Offense of providing location for minors to engage in public indecency.

(a) It is an offense for a person eighteen (18) years of age or older to knowingly promote or organize a gathering of two (2) or more minors in a public place, as defined in § 39-13-511, with the intent to provide a location for said minors to engage in public indecency as defined in § 39-13-511.

(b) A violation of subsection (a) is a Class A misdemeanor.

(c) Any personal property used in the commission of a violation of this section is, upon conviction, subject to judicial forfeiture as provided in title 39, chapter 11, part 7.

(d) Nothing in this section shall deprive a court of any authority to suspend or cancel a license, declare the establishment a nuisance or impose costs and other monetary obligations if specifically authorized by law.

(e) For purposes of this section "public area on the property of that business or retail establishment" means a public place as defined in § 39-13-511.

39-17-1001. Short title.

This part shall be known and may be cited as the "Tennessee Protection of Children Against Sexual Exploitation Act of 1990."

39-17-1002. Part definitions.

The following definitions apply in this part, unless the context otherwise requires:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval;

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission; or

(E) Any computer image, or computer-generated image, whether made or produced by electronic, mechanical, or other means;

(3) "Minor" means any person who has not reached eighteen (18) years of age;

(4) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(5) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one (1) or more persons;

(6) "Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise, or to offer or agree to do those things;

(7) "Prurient interest" means a shameful or morbid interest in sex; and

(8) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

39-17-1003. Offense of sexual exploitation of a minor.

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

39-17-1004. Offense of aggravated sexual exploitation of a minor.

(a)

(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b)

(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901, or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in;

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

(e) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

39-17-1005. Offense of especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

(g) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

65-21-117. Interference with emergency calls.

(a) An individual commits an offense if the individual knowingly prevents another individual from placing a telephone call to 911 or from requesting assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(b) An individual commits an offense if the individual intentionally renders unusable a telephone that would otherwise be used by another individual to place a telephone call to 911 or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity, the primary purpose of which is to provide for the safety of individuals.

(c) An offense under this section is a Class A misdemeanor.

(d) In this section, "emergency" means a condition or circumstance in which any individual is or is reasonably believed by the individual making a telephone call to be in fear of imminent assault or in which property is or is reasonably believed by the individual making the telephone call to be in imminent danger of damage or destruction.

IV. Criminal Procedures

24-7-123. Admission of video recording of interview of child describing sexual conduct.

(a) Notwithstanding any of this part to the contrary, a video recording of an interview of a child by a forensic interviewer containing a statement made by the child under thirteen (13) years of age describing any act of sexual contact performed with or on the child by another is admissible and may be considered for its bearing on any matter to which it is relevant in evidence at the trial of the person for any offense arising from the sexual contact if the requirements of this section are met.

(b) A video recording may be admitted as provided in subsection (a) if:

(1) The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination;

(2) The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pretrial, to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the court shall consider the following factors:

(A) The mental and physical age and maturity of the child;

(B) Any apparent motive the child may have to falsify or distort the event, including, but not limited to, bias or coercion;

(C) The timing of the child's statement;

(D) The nature and duration of the alleged abuse;

(E) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(F) Whether the statement is spontaneous or directly responsive to questions;

(G) Whether the manner in which the interview was conducted was reliable, including, but not limited to, the absence of any leading questions;

(H) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;

(I) The relationship of the child to the offender;

(J) Whether the equipment that was used to make the video recording was capable of making an accurate recording; and

(K) Any other factor deemed appropriate by the court;

(3) The interview was conducted by a forensic interviewer who met the following qualifications at the time the video recording was made, as determined by the court:

(A) Was employed by a child advocacy center that meets the requirements of § 9-4-213(a) or (b); provided, however, that an interview shall not be inadmissible solely because the interviewer is employed by a child advocacy center that:

(i) Is not a nonprofit corporation, if the child advocacy center is accredited by a nationally recognized accrediting agency; or

(ii) Employs an executive director who does not meet the criteria of § 9-4-213(a)(2), if the executive director is supervised by a publicly elected official;

(B) Had graduated from an accredited college or university with a bachelor's degree in a field related to social service, education, criminal justice, nursing, psychology or other similar profession;

(C) Had experience equivalent to three (3) years of fulltime professional work in one (1) or a combination of the following areas:

(i) Child protective services;

(ii) Criminal justice;

(iii) Clinical evaluation;

(iv) Counseling; or

(v) Forensic interviewing or other comparable work with children;

(D) Had completed a minimum of forty (40) hours of forensic training in interviewing traumatized children and fifteen (15) hours of continuing education annually.

(E) Had completed a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children;

(F) Had knowledge of child development through coursework, professional training or experience;

(G) Had no criminal history as determined through a criminal records background check; and

(H) Had actively participated in peer review;

(4) The recording is both visual and oral and is recorded on film or videotape or by other similar audiovisual means;

(5) The entire interview of the child was recorded on the video recording and the video recording is unaltered and accurately reflects the interview of the child; and

(6) Every voice heard on the video recording is properly identified as determined by the court.

(c) The video recording admitted pursuant to this section shall be discoverable pursuant to the Tennessee Rules of Criminal Procedure.

(d) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

(e) The court shall enter a protective order to restrict the video recording used pursuant to this section from further disclosure or dissemination. The video recording shall not become a public record in any legal proceeding. The court shall order the video recording be sealed and preserved following the conclusion of the criminal proceeding.

28-3-116. Action for injury or illness based on child sexual abuse.

(a) As used in this section, unless the context otherwise requires:

(1) "Child sexual abuse" means any act set out in § 37-1-602(a)(3), that occurred when the victim was a minor;

(2) "Discovery" means when the injured person becomes aware that the injury or illness was caused by child sexual abuse. Discovery that the injury or illness was caused by child sexual abuse shall not be deemed to have occurred solely by virtue of the injured person's awareness, knowledge, or memory of the acts of abuse;

(3) "Injury or illness" means either a physical injury or illness or a psychological injury or illness; and

(4) "Minor" means a person under eighteen (18) years of age.

(b) Notwithstanding § 28-3-104, a civil action for an injury or illness based on child sexual abuse that occurred when the injured person was a minor must be brought:

(1) For child sexual abuse that occurred before July 1, 2019, but was not discovered at the time of the abuse, within three (3) years from the time of discovery of the abuse by the injured person; or

(2) For child sexual abuse that occurred on or after July 1, 2019, within the later of:

(A) Fifteen (15) years from the date the person becomes eighteen (18) years of age; or

(B) If the injury or illness was not discovered at the time of the abuse, within three (3) years from the time of discovery of the abuse by the injured person.

(c) A person bringing an action under this section need not establish or prove:

(1) Which act in a series of continuing child sexual abuse incidents by the alleged perpetrator caused the injury or illness complained of, but may compute the date of discovery from the date of discovery of the last act by the same alleged perpetrator which is part of a common scheme or pattern of child sexual abuse; or

(2) That the injured person psychologically repressed the memory of the facts upon which the claim is predicated.

(d) In an action brought under this section, the knowledge of a parent or guardian shall not be imputed to a minor.

(e) If an action is brought against someone other than the alleged perpetrator of the child sexual abuse, and if the action is brought more than one (1) year from the date the injured person attains the age of majority, the injured person must offer admissible and credible evidence corroborating the claim of abuse by the alleged perpetrator.

29-13-118. Forensic medical examinations in sexual assault cases.

(a) For purposes of this section, unless the context otherwise requires, "forensic medical examination" means an examination provided to a victim of a sexually-oriented crime by any health care provider who gathers evidence of a sexual assault in a manner suitable for use in a court of law.

(b)

(1) A victim of a sexually-oriented crime, defined as a violation of §§ 39-13-502 – 39-13-506, 39-13-522, 39-13-527, 39-13-531, and 39-13-532, shall be entitled to forensic medical examinations without charge to the victim. No bill for the examination shall be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. All claims for forensic medical examinations are eligible for payment from the criminal injuries compensation fund, created under § 40-24-107.

(2) Notwithstanding any provision of this part to the contrary, the victims shall not be required to report the incident to law enforcement officers or to cooperate in the prosecution of the crime in order to be eligible for payment of forensic medical examinations.

(c) A claim for compensation under this section shall be filed no later than one (1) year after the date of the examination by the health care provider that performed the examination, including a hospital, physician, SANE program, Child Advocacy Center, or other medical facility. The claim shall be filed with the division, in person or by mail. The division is authorized to prescribe and distribute forms for the filing of claims for compensation. The claim shall set forth the name and address of the victim, and any other information required by the division in order to satisfy federal regulations issued under the Victims of Crime Act of 1984, compiled generally in 42 U.S.C. § 10601 et seq. The claim shall be accompanied by an itemized copy of the bill from the health care provider that conducted the examination. The bill shall, at a minimum, set forth the name of the victim, the date the examination was performed, the amount of the bill, the amount of any payments made on the bill, and the name and address of the health care provider that performed the examination.

(d) The amount of compensation that may be awarded under this section shall not exceed one thousand dollars ($1,000), and shall constitute full compensation to the health care provider that provided the service. No provider receiving compensation pursuant to this section shall bill the victim for any additional cost related to the forensic medical examination. The compensation shall be made pursuant to this subsection (d) no later than ninety (90) days after receiving the documentation required under subsection (c).

(e) Payment to a health care provider under this section does not prohibit the victim from receiving other payments for which the victim may be eligible under this part or any other law.

38-3-123. Prohibition against requiring victims of sexual offenses to submit to polygraph.

(a) No law enforcement officer shall require any victim of a sexual offense, as defined in § 40-39-202, or violent sexual offense, as defined in § 40-39-202, to submit to a polygraph examination or any other test designed to detect deception or verify the truth of statements through instrumentation or by means of a mechanical device, as a condition of the officer proceeding with the investigation of the offense.

(b) A violation of this section shall subject the officer to appropriate departmental disciplinary action.

40-1-111. Appointment of judicial commissioners or magistrates — Duties — Terms — Compensation — Continuing education.

(a)

(1)

(A) The chief legislative body of any county having a population of less than two hundred thousand (200,000) or a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census may appoint, and the chief legislative body of any county having a population of over seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, may initially appoint one (1) or more judicial commissioners whose duty or duties shall include, but not be limited to, the following:

(i) Issuance of search warrants and felony arrest warrants upon a finding of probable cause and pursuant to requests from on-duty law enforcement officers and in accordance with the procedures outlined in chapters 5 and 6 of this title;

(ii) Issuance of mittimus following compliance with the procedures prescribed by § 40-5-103;

(iii) The appointing of attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;

(iv) The setting and approving of bonds and the release on recognizance of defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county; and

(v) Issuance of injunctions and other appropriate orders as designated by the general sessions judges in cases of alleged domestic violence.

(B)

(i) This subdivision (a)(1)(B)(i) applies to any county having a population of less than two hundred thousand (200,000) or a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census. The term or terms of the officers shall be established by the chief legislative body of the county to which this subdivision (a)(1)(B)(i) applies but shall not exceed a four-year term. No member of the county legislative body of any county to which this subdivision (a)(1)(B)(i) applies shall be eligible for appointment as a judicial commissioner. Notwithstanding the provisions of this subdivision (a)(1)(B)(i) to the contrary, the presiding general sessions criminal judge of a county to which this subdivision (a)(1)(B)(i) applies may appoint a temporary or part-time judicial commissioner to serve at the pleasure of the presiding judge in case of absence, emergency or other need. The legislative body of any county to which this subdivision (a)(1)(B)(i) applies, in appointing, evaluating and making decisions relative to retention and reappointment, shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve.

(ii) Any subsequent term of a judicial commissioner initially appointed by the chief legislative body of any county having a population of over seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, shall be by the general sessions judges of that county. The term or terms of the officers shall be established by the general sessions criminal court judges of the county but shall not exceed a four-year term. No member of the county legislative body of the county shall be eligible for appointment as a judicial commissioner. Notwithstanding the provisions of this subdivision (a)(1)(B)(ii) to the contrary, the presiding general sessions criminal court judge of the county may appoint a temporary, or part-time, judicial commissioner to serve at the pleasure of the presiding judge in case of absence, emergency or other need. The general sessions judges of the county in appointing, evaluating and making decisions relative to retention and reappointment shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve.

(iii) Any subsequent term of a judicial commissioner initially appointed by the chief legislative body of any county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census, shall be by the general sessions judges of that county. In the event that the general sessions judges are unable to agree on the appointment of a judicial commissioner, the appointment shall be made by the chief legislative body of the county; provided, that any appointment made by the chief legislative body of the county shall not be construed to divest the general sessions judges of the supervisory authority over the judicial commissioner.

(C) In any county having a population greater than seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, to be eligible for appointment and service as a judicial commissioner a person must be licensed to practice law in this state.

(D)

(i) Any county, having a population greater than seven hundred thousand (700,000), according to the 1970 federal census or any subsequent federal census, which appoints and makes use of judicial commissioners shall maintain records sufficient to allow an annual determination of whether the use of judicial commissioners is accomplishing the purposes intended.

(ii) On an annual basis the county legislative body shall conduct a public hearing to examine and evaluate the program of judicial commissioners and to determine if the program is being conducted in accordance with law and is contributing to the orderly, effective and fair administration of justice. As a part of the public hearing the county legislative body shall examine the effectiveness of the system of judicial commissioners and hear the opinions of the public concerning the system. The county legislative body shall give notice of the public hearing at least thirty (30) days prior to the meeting.

(iii) Following the hearing and not later than April 1 of each year, the county legislative body shall cause to be submitted to the judges of the general sessions criminal court of the county, the chair of the judiciary committee of the senate and the chair of the judiciary committee of the house of representatives a written report setting forth findings and the overall evaluation of the use of judicial commissioners.

(2) The judicial commissioner or commissioners shall be compensated from the general fund of the county in an amount to be determined by the chief legislative body. Fees established and authorized by § 8-21-401 shall be paid to the county general fund upon the services detailed in § 8-21-401 being performed by a judicial commissioner.

(b)

(1) Notwithstanding any provision of this section to the contrary, a judge of a court of general sessions in a county having a population of not less than fourteen thousand seven hundred (14,700) nor more than fourteen thousand eight hundred (14,800), according to the 1970 federal census or any subsequent federal census, may appoint one (1) or more judicial commissioners whose duties shall be the same as those prescribed for judicial commissioners in subsection (a). The judge may appoint a commissioner if the county legislative body of the counties noted in subsection (a) does not appoint a judicial commissioner before May 1, 1980. The term of the judicial officer shall be for one (1) year or until the county legislative body appoints a judicial commissioner as provided by subsection (a).

(2) A judicial commissioner who is appointed by a general sessions judge as outlined in subdivision (b)(1) shall serve without compensation unless an amount of compensation is specifically established by the county legislative body.

(c) Notwithstanding any provision of this section to the contrary, in any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census, any appointment of a judicial commissioner pursuant to subsection (a) shall be subject to the approval of a majority of the general sessions judges in the county.

(d)

(1) Notwithstanding subsections (a)-(c), the legislative body of any county having a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand six hundred (41,600), according to the 1990 federal census or any subsequent federal census, may, by resolution, create the position of one (1) or more judicial commissioners.

(2) The duties of a commissioner shall include, but are not limited to, the following:

(A) The issuance of arrest warrants upon a finding of probable cause;

(B) The setting of bonds and recognizance in accordance with the procedures outlined in chapters 5 and 6 of this title;

(C) The issuance of search warrants where authorized by the general sessions judge or a judge of a court of record; and

(D) The issuance of mittimus following compliance with the procedures prescribed by § 40-5-103.

(3) The term of a judicial commissioner shall be established by the general sessions judge of the county, but in no event shall the term exceed four (4) years.

(4) A judicial commissioner shall be compensated from the general fund of the county in an amount to be determined by the general sessions judge of the county and subject to the approval of the county legislative body. Fees established and authorized by § 8-21-401 shall be paid to the general fund upon the services detailed in § 8-21-401 being performed by a judicial commissioner.

(5) A judicial commissioner shall be selected and appointed by the general sessions judge in the county, and shall serve at the pleasure of such general sessions judge, but not longer than the term specified in subdivision (d)(3).

(e)

(1) Notwithstanding subsections (a)-(d), any county having a population of not less than three hundred seven thousand (307,000) nor more than three hundred eight thousand (308,000), according to the 2000 federal census or any subsequent federal census, may elect to establish judicial commissioners to assist the general sessions court in accordance with this subdivision (e)(1). The county legislative body may appoint one (1) or more attorneys to serve as judicial commissioners. The duties of a judicial commissioner shall include, but not be limited to the following

(A) Issuance of arrest and search warrants upon a finding of probable cause in accordance with the procedures outlined in chapters 5 and 6 of this title;

(B) Issuance of mittimus following compliance with the procedures prescribed by § 40-5-103;

(C) Appointing attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;

(D) Setting and approving bonds and the release on recognizance of defendants in accordance with chapter 11 of this title; and

(E) Setting bond for the circuit court judges and chancellors in cases involving violations of orders of protection between the hours of nine o'clock p.m. (9:00 p.m.) and seven o'clock a.m. (7:00 a.m.) on weekdays, and on weekends, holidays and at any other time when the judge or chancellor is unavailable to set bond.

(2) The term of office for a judicial commissioner shall be established by the county legislative body, but such term shall not exceed four (4) years. A member of the county legislative body is not eligible for appointment as a judicial commissioner.

(3) A judicial commissioner shall be compensated from the general fund of the county in an amount to be determined by the county legislative body. Fees established and authorized by § 8-21-401 shall be paid to the county general fund upon the services detailed therein being performed by a judicial commissioner.

(f)

(1) Beginning January 1, 2010, each judicial commissioner who is appointed to serve pursuant to this section must complete twelve (12) hours of continuing education each calendar year, ten (10) hours of which must be completed by attendance at conferences or courses sponsored or approved by the Judicial Commissioners Association of Tennessee. The remaining two (2) hours may be completed by attendance at classes sponsored by either the Judicial Commissioners Association of Tennessee or the Tennessee Court Clerks Association, or by local in-service education. At least six (6) hours of the total twelve (12) hours must be taught by a person who is licensed to practice law in this state.

(2) Any judicial commissioner who is licensed to practice law in this state is authorized to use continuing legal education credits toward completion of the ten (10) hours, which otherwise must be completed by attendance at conferences or courses sponsored or approved by the Judicial Commissioners Association of Tennessee.

(3) All judicial commissioners must complete, as part of the twelve (12) required hours, the following classes:

(A) At least two (2) hours concerning domestic violence or child abuse;

(B) At least one (1) hour concerning bail and bonds; and

(C) At least one (1) hour concerning ethics.

(4) All counties for which judicial commissioners are appointed to serve pursuant to this section shall provide all necessary funding for their respective judicial commissioners to complete the continuing education required by this subsection (f).

(5) All records indicating satisfaction of the continuing education requirements for judicial commissioners shall be maintained by each county and kept on the file for at least seven (7) years.

(6) Notwithstanding this subsection (f), in any county in which the judicial commissioner is selected by the general sessions judge or judges, the county legislative body of such county may elect, by a two-thirds (⅔) majority, to allow each judicial commissioner to receive twelve (12) hours of appropriate continuing education each calendar year under the supervision of the appointing general sessions judge or judges rather than the Judicial Commissioners Association of Tennessee or the Tennessee Court Clerks Association. Further, in any county that has previously made this election, that county may later rescind that action by a subsequent two-thirds (⅔) majority vote of its county legislative body as to allow the judicial commissioners to receive the required training through the Judicial Commissioners Association of Tennessee or the Tennessee Court Clerks Association.

(7) Subject to appropriation, funds from the judicial commissioner continuing education account, created in § 67-4-602(k), shall be used by the Judicial Commissioners Association of Tennessee for the development and presentation of continuing education programs, courses and conferences for judicial commissioners in this state.

(g) Judicial commissioners duly appointed pursuant to this section in any county with a population not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census, shall be known as "magistrates."

(h)

(1) In any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census, there is created the position of domestic abuse magistrate.

(2) Notwithstanding any other law to the contrary, the domestic abuse magistrate created by this subsection (h) shall be appointed by the judge of the fourth circuit court of any such county and shall hold office for a term of eight (8) years from the date of appointment. The magistrate shall be eligible for reappointment to successive eight-year terms and shall be compensated from the general fund of the county in an amount to be determined by the county legislative body. Upon making a selection, the judge shall reduce the appointment to writing and file it with the fourth circuit court clerk of any county to which this subsection (h) applies. The domestic abuse magistrate, once appointed, shall regularly perform the duties set out in this subsection (h) within the approximate time period that the fourth circuit court begins and ends its daily docket, and the magistrate shall be styled as magistrate judge.

(3) To qualify for the position of domestic abuse magistrate, the applicant must:

(A) Be at least thirty (30) years of age;

(B) Be a resident of the county funding the position;

(C) Be an attorney, licensed to practice law in the courts of this state; and

(D) Have served as a judicial commissioner or magistrate pursuant to subsection (a) for at least a full four-year term prior to application.

(4) No person who is a judicial commissioner under subsection (a) or a magistrate under subsection (g) prior to the appointment of the domestic abuse magistrate may simultaneously hold that position and the position of domestic abuse magistrate under this subsection (h).

(5) For purposes of:

(A) Title 36, chapter 3, part 6, the domestic abuse magistrate shall be considered a "court" as defined in § 36-3-601(3)(A) and (D), and shall have all jurisdiction and authority necessary to serve in that function for the employing county; and

(B) Chapter 5, part 1 of this title, the domestic abuse magistrate shall be considered a "magistrate" as defined in § 40-5-102, and shall have all of the jurisdiction and authority necessary to serve in that function for the employing county, and the domestic abuse magistrate shall complete the judicial continuing education requirements of subsection (f) in the same manner as a judicial commissioner.

(6) The domestic abuse magistrate shall have, regardless of whether the case involves alleged domestic abuse, the following duties pursuant to this chapter, the Tennessee Rules of Civil Procedure, the Tennessee Rules of Criminal Procedure, and applicable statutes:

(A) Those conferred upon a court by title 36, chapter 3, part 6;

(B) Issuing or denying temporary or ex-parte orders of protection;

(C) Setting and approving bond in cases of civil and criminal contempt for alleged violations of orders of protection;

(D) Issuing injunctions and other appropriate orders in cases of alleged domestic violence;

(E) Setting and approving of bonds and release on recognizance of defendants in accordance with applicable law;

(F) Issuing mittimus in compliance with § 40-5-103;

(G) Issuing criminal arrest warrants, criminal summons, and search warrants upon a finding of probable cause;

(H) Appointing attorneys for indigent defendants and respondents in accordance with applicable law;

(I) Conducting initial appearances in accordance with Rule 5 of the Tennessee Rules of Criminal Procedure;

(J) Setting and approving bond for probation violation warrants;

(K) Issuing attachments, capias, or conditional bond forfeitures;

(L) Conducting compliance review dockets to examine and report to the appropriate judge any findings and conclusions regarding compliance with court orders;

(M) Conducting initial appearances for any defendant following arrest for a crime involving domestic abuse when conducted pursuant to the requirements imposed by § 36-3-602(c) [repealed]; and

(N) Any other judicial duty not prohibited by the constitution, statute, or applicable rules, when requested by a judge.

(7) If the domestic abuse magistrate is carrying out one (1) of the duties of the office under this subsection (h), the failure to appear before the magistrate constitutes failure to appear and shall subject the defendant or respondent to arrest and forfeiture of bond.

(8) If the appointed domestic abuse magistrate is absent or unavailable for any reason, the magistrate has the authority to appoint special, substitute, or temporary magistrates to carry out the duties of this section. A substitute magistrate shall be an attorney, licensed to practice law in the courts of this state, a resident of the county of the appointing domestic abuse magistrate, and not less than thirty (30) years of age. An order of appointment for a special, substitute, or temporary magistrate shall be for a fixed period of time and shall be reduced to writing and filed with the fourth circuit court clerk.

(9) The domestic abuse magistrate may also accept appointment by the judge of the fourth circuit court to serve as a special master to the fourth circuit court for any purpose established by the judge. The appointment may be made by the judge at the same time as the appointment to the position of domestic abuse magistrate, or at any time during the magistrate's term.

40-2-101. Felonies.

(a) A person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed.

(b) Prosecution for a felony offense shall begin within:

(1) Fifteen (15) years for a Class A felony;

(2) Eight (8) years for a Class B felony;

(3) Four (4) years for a Class C or Class D felony; and

(4) Two (2) years for a Class E felony.

(c) Notwithstanding subsections (a) and (b), offenses arising under the revenue laws of the state shall be commenced within the three (3) years following the commission of the offense, except that the period of limitation of prosecution shall be six (6) years in the following instances:

(1) Offenses involving the defrauding or attempting to defraud the state of Tennessee or any agency of the state, whether by conspiracy or not, and in any manner;

(2) The offense of willfully attempting in any manner to evade or defeat any tax or the payment of a tax;

(3) The offense of willfully aiding or abetting, or procuring, counseling or advising, the preparation or presentation under, or in connection with, any matter arising under the revenue laws of the state, or a false or fraudulent return, affidavit, claim or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document; and

(4) The offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulation.

(d) Notwithstanding the provisions of subdivision (b)(3) to the contrary, prosecution for the offense of arson as prohibited by § 39-14-301 shall commence within eight (8) years from the date the offense occurs.

(e) Prosecutions for any offense committed against a child prior to July 1, 1997, that constitutes a criminal offense under § 39-2-601 [repealed], § 39-2-603 [repealed], § 39-2-604 [repealed], § 39-2-606 [repealed], § 39-2-607 [repealed], § 39-2-608 [repealed], § 39-2-612 [repealed], § 39-4-306 [repealed], § 39-4-307 [repealed], § 39-6-1137 [repealed], or § 39-6-1138 [repealed], or under §§ 39-13-502 — 39-13-505, § 39-15-302 or § 39-17-902 shall commence no later than the date the child attains the age of majority or within four (4) years after the commission of the offense, whichever occurs later; provided, that pursuant to subsection (a), an offense punishable by life imprisonment may be prosecuted at any time after the offense has been committed.

(f) For offenses committed prior to November 1, 1989, the limitation of prosecution in effect at that time shall govern.

(g)

(1) Prosecutions for any offense committed against a child on or after July 1, 1997, that constitutes a criminal offense under § 39-17-902 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.

(2) Prosecutions for any offense committed against a child on or after July 1, 1997, but prior to June 20, 2006, that constitutes a criminal offense under §§ 39-13-502 — 39-13-505, § 39-13-522 or § 39-15-302 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.

(h)

(1) A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under § 39-13-504, § 39-13-505, § 39-13-527 or § 39-15-302, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under § 39-13-502, § 39-13-503 or § 39-13-522 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(i)

(1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under § 39-13-532, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under § 39-13-531, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(j) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2012, that constitutes a criminal offense under § 39-17-902, § 39-17-1003, § 39-17-1004, or § 39-17-1005, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(k)

(1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 or § 39-13-529, no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(3)

(A) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(B) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(l)

(1) Notwithstanding subsections (b), (g), (h), and (i) to the contrary, a person may be prosecuted, tried, and punished at any time after the commission of an offense if:

(A) The offense was one (1) of the following:

(i) Aggravated rape, as prohibited by § 39-13-502; or

(ii) Rape, as prohibited by § 39-13-503;

(B) The victim was an adult at the time of the offense;

(C) The victim notifies law enforcement or the office of the district attorney general of the offense within three (3) years of the offense; and

(D) The offense is committed:

(i) On or after July 1, 2014; or

(ii) Prior to July 1, 2014, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2014.

(2) If subdivision (*l*)(1) does not apply to the specified offenses, prosecution shall be commenced within the times otherwise provided by this section.

(m) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2016, that constitutes the offense of aggravated statutory rape under § 39-13-506(c), no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(n) Notwithstanding subsection (b), prosecutions for any offense committed on or after July 1, 2016, that constitutes the offense of aggravated child abuse, or aggravated child neglect or endangerment, under § 39-15-402, shall commence by the later of:

(1) Ten (10) years after the child reaches eighteen (18) years of age; or

(2) The time within which prosecution must be commenced pursuant to subsection (b).

(o) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2019, that constitutes the offense of female genital mutilation, under § 39-13-110, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(p) Notwithstanding subsection (b), a person may be prosecuted, tried, and punished for second degree murder, as prohibited by § 39-13-210, that is committed on or after July 1, 2019, at any time after the offense is committed.

(q)

(1) Notwithstanding subsections (b), (g), (h), (i), (j), (k), or (m), prosecution for the following offenses, when committed against a minor under eighteen (18) years of age shall commence as provided by this subsection (q):

(A) Trafficking for a commercial sex act, as prohibited by § 39-13-309;

(B) Aggravated rape, as prohibited by § 39-13-502;

(C) Rape, as prohibited by § 39-13-503;

(D) Aggravated sexual battery, as prohibited by § 39-13-504;

(E) Sexual battery, as prohibited by § 39-13-505;

(F) Mitigated statutory rape, as prohibited by § 39-13-506;

(G) Statutory rape, as prohibited by § 39-13-506;

(H) Aggravated statutory rape, as prohibited by § 39-13-506(c);

(I) Indecent exposure, as prohibited by § 39-13-511, when the offense is classified as a felony offense;

(J) Patronizing prostitution, as prohibited by § 39-13-514;

(K) Promotion of prostitution, as prohibited by § 39-13-515;

(L) Continuous sexual abuse of a child, as prohibited by § 39-13-518;

(M) Rape of a child, as prohibited by § 39-13-522;

(N) Sexual battery by an authority figure, as prohibited by § 39-13-527;

(O) Solicitation of a minor, as prohibited by § 39-13-528, when the offense is classified as a felony offense;

(P) Soliciting sexual exploitation of a minor - exploitation of a minor by electronic means, as prohibited by § 39-13-529;

(Q) Aggravated rape of a child, as prohibited by § 39-13-531;

(R) Statutory rape by an authority figure, as prohibited by § 39-13-532;

(S) Unlawful photographing, as prohibited by § 39-13-605, when the offense is classified as a felony offense;

(T) Observation without consent, as prohibited by § 39-13-607, when the offense is classified as a felony offense;

(U) Incest, as prohibited by § 39-15-302;

(V) Sexual exploitation of a minor, as prohibited by § 39-17-1003;

(W) Aggravated sexual exploitation of a minor, as prohibited by § 39-17-1004; or

(X) Especially aggravated sexual exploitation of a minor, as prohibited by § 39-17-1005.

(2) A person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:

(A) The victim was under thirteen (13) years of age at the time of the offense; or

(B)

(i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and

(ii) The victim reported the offense to another person prior to the victim attaining twenty-three (23) years of age.

(3)

(A) Except as provided in subdivision (q)(3)(B), a person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:

(i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and

(ii) The victim did not meet the reporting requirements of subdivision (q)(2)(B)(ii).

(B) In order to commence prosecution for an offense listed in subdivision (q)(1) under the circumstances described in subdivision (q)(3)(A), at a date that is more than twenty-five (25) years from the date the victim becomes eighteen (18) years of age, the prosecution is required to offer admissible and credible evidence corroborating the allegations or similar acts by the defendant

(4) This subsection (q) applies to offenses:

(A) Committed on or after July 1, 2019; or

(B) Committed prior to July 1, 2019, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2019.

40-2-102. Misdemeanors.

(a) Except as provided in § 62-18-120(g) and subsection (b) of this section, all prosecutions for misdemeanors shall be commenced within the twelve (12) months after the offense has been committed, except gaming, which shall be commenced within six (6) months.

(b) Prosecutions under § 39-16-301 for criminal impersonation accomplished through the use of a fraudulently obtained driver license shall be commenced within one (1) year of the date the driver license expires or within three (3) years of the date the nonexpired driver license was last used to falsely impersonate the person in whose name the driver license was issued, whichever is longer.

40-6-205. Issuance of warrant.

(a) If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is probable cause to believe the defendant has committed it, then the magistrate shall issue an arrest warrant. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part; provided, however, that there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

(b) In determining whether to issue an arrest warrant pursuant to subsection (a), or a criminal summons pursuant to § 40-6-215, the following shall apply:

(1) If a single or multiple affiants are seeking a warrant of arrest for a felony or misdemeanor offense, and at least one (1) or more of the affiants is a law enforcement officer, as defined by § 39-11-106, the magistrate shall issue an arrest warrant unless the law enforcement officer requests a summons be issued instead;

(2) If a single or multiple affiants are seeking a warrant of arrest for a misdemeanor offense, as defined in § 39-11-110, and none of the affiants is a law enforcement officer, as defined by § 39-11-106, there is a presumption that the magistrate shall issue a criminal summons. The presumption is overcome if:

(A) The affiant or affiants request a warrant, submit sufficient information demonstrating the need for a warrant, and the magistrate agrees that an arrest warrant should be issued instead of a summons; or

(B) The magistrate finds an arrest warrant is necessary to prevent immediate danger to a victim of domestic abuse, sexual assault or stalking as defined in § 36-3-601;

(3) If a single or multiple affiants are seeking a warrant of arrest for a felony offense as defined in § 39-11-110, and none of the affiants is a law enforcement officer, as defined by § 39-11-106, there is a presumption that the magistrate shall not issue either a criminal summons as provided in § 40-6-215, or an arrest warrant. This presumption is overcome if the magistrate finds an arrest warrant is necessary to prevent immediate danger to a victim of domestic abuse, sexual assault or stalking as defined in § 36-3-601.

(c) Notwithstanding this section, if the affiant to an affidavit of complaint for an arrest warrant is the parent or legal guardian of a child who is the victim of alleged criminal conduct, no arrest warrant shall issue to the affiant without the written approval of the district attorney general in the district in which the conduct occurred if:

(1) The person the affiant seeks to have arrested was an employee of a local education agency (LEA) at the time of the alleged offense; and

(2) The affiant alleges that the LEA employee engaged in conduct that harmed the child of the affiant parent or legal guardian and, at the time of the conduct, the LEA employee had supervisory or disciplinary power over the child.

40-7-103. Grounds for arrest by officer without warrant.

(a) An officer may, without a warrant, arrest a person:

(1) For a public offense committed or a breach of the peace threatened in the officer's presence;

(2) When the person has committed a felony, though not in the officer's presence;

(3) When a felony has in fact been committed, and the officer has reasonable cause for believing the person arrested has committed the felony;

(4) On a charge made, upon reasonable cause, of the commission of a felony by the person arrested;

(5) Who is attempting to commit suicide;

(6) At the scene of a traffic accident who is the driver of a vehicle involved in the accident when, based on personal investigation, the officer has probable cause to believe that the person has committed an offense under title 55, chapters 8 and 10. This subdivision (a)(6) shall not apply to traffic accidents in which no personal injury occurs or property damage is less than one thousand dollars ($1,000), unless the officer has probable cause to believe that the driver of the vehicle has committed an offense under § 55-10-401;

(7) Pursuant to § 36-3-619;

(8) Who is the driver of a vehicle involved in a traffic accident either at the scene of the accident or up to four (4) hours after the driver has been transported to a health care facility, if emergency medical treatment for the driver is required and the officer has probable cause to believe that the driver has violated § 55-10-401

(9) When an officer has probable cause to believe a person has committed the offense of stalking, as prohibited by § 39-17-315;

(10) Who is the driver of a motor vehicle involved in a traffic accident, who leaves the scene of the accident, who is apprehended within four (4) hours of the accident, and the officer has probable cause to believe the driver has violated § 55-10-401; or

(11) Pursuant to § 55-10-119.

(b) If a law enforcement officer has probable cause to believe that a person has violated one (1) or more of the conditions of release imposed pursuant to § 40-11-150, and verifies that the alleged violator received notice of the conditions, the officer shall, without a warrant, arrest the alleged violator regardless of whether the violation was committed in or outside the presence of the officer.

(c) Unless a law enforcement officer has probable cause to believe that an offense has been committed, no officer, except members of the Tennessee highway patrol acting pursuant to § 4-7-104, shall have the authority to stop a motor vehicle for the sole purpose of examining or checking the license of the driver of the vehicle.

40-7-118. Use of citations in lieu of continued custody of an arrested person.

(a) As used in this section, unless the context otherwise requires:

(1) "Citation" means a written order issued by a peace officer requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. The order shall require the signature of the person to whom it is issued;

(2) "Magistrate" means any state judicial officer, including the judge of a municipal court, having original trial jurisdiction over misdemeanors or felonies; and

(3)

(A) "Peace officer" means an officer, employee or agent of government who has a duty imposed by law to:

(i) Maintain public order;

(ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and

(iii) Investigate the commission or suspected commission of offenses; and

(B) "Peace officer" also includes an officer, employee or agent of government who has the duty or responsibility to enforce laws and regulations pertaining to forests in this state.

(b)

(1) A peace officer who has arrested a person for the commission of a misdemeanor committed in the peace officer's presence, or who has taken custody of a person arrested by a private person for the commission of a misdemeanor, shall issue a citation to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate. If the peace officer is serving an arrest warrant or capias issued by a magistrate for the commission of a misdemeanor, it is in the discretion of the issuing magistrate whether the person is to be arrested and taken into custody or arrested and issued a citation in accordance with this section in lieu of continued custody. The warrant or capias shall specify the action to be taken by the serving peace officer who shall act accordingly.

(2)

(A) This subsection (b) does not apply to an arrest for the offense of driving under the influence of an intoxicant as prohibited by § 55-10-401, unless the offender was admitted to a hospital, or detained for medical treatment for a period of at least three (3) hours, for injuries received in a driving under the influence incident.

(B) This subsection (b) does not apply to any misdemeanor offense for which § 55-10-207 or § 55-12-139 authorizes a traffic citation in lieu of arrest, continued custody and the taking of the arrested person before a magistrate.

(3) A peace officer may issue a citation to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate if a person is arrested for:

(A) The offense of theft which formerly constituted shoplifting, in violation of § 39-14-103;

(B) Issuance of bad checks, in violation of § 39-14-121;

(C) Use of a revoked or suspended driver license in violation of § 55-50-504, § 55-50-601 or § 55-50-602;

(D) Assault or battery as those offenses are defined by common law, if the officer believes there is a reasonable likelihood that persons would be endangered by the arrested person if a citation were issued in lieu of continued physical custody of the defendant; or

(E) Prostitution, in violation of § 39-13-513, if the arresting party has knowledge of past conduct of the defendant in prostitution or has reasonable cause to believe that the defendant will attempt to engage in prostitution activities within a reasonable period of time if not arrested.

(c) A peace officer may arrest and take a person into custody if:

(1) A reasonable likelihood exists that the arrested person will fail to appear in court; or

(2) The prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized

(d) No citation shall be issued under this section if:

(1) The person arrested requires medical examination or medical care, or if the person is unable to care for the person's own safety;

(2) There is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by the arrested person.

(3) The person arrested cannot or will not offer satisfactory evidence of identification, including the providing of a field-administered fingerprint or thumbprint which a peace officer may require to be affixed to any citation;

(4) [Deleted by 2019 amendment.]

(5) [Deleted by 2019 amendment.]

(6) The person demands to be taken immediately before a magistrate or refuses to sign the citation;

(7) The person arrested is so intoxicated that the person could be a danger to the person's own self or to others;

(8) There are one (1) or more outstanding arrest warrants for the person; or

(9) The person is subject to arrest pursuant to § 55-10-119.

(e) In issuing a citation, the officer shall:

(1) Prepare a written order which shall include the name and address of the cited person, the offense charged and the time and place of appearance;

(2) Have the offender sign the original and duplicate copy of the citation. The officer shall deliver one (1) copy to the offender and retain the other; and

(3) Release the cited person from custody.

(f) By accepting the citation, the defendant agrees to appear at the arresting law enforcement agency prior to trial to be booked and processed. Failure to so appear is a Class A misdemeanor.

(g) If the person cited fails to appear in court on the date and time specified or fails to appear for booking and processing prior to the person's court date, the court shall issue a bench warrant for the person's arrest.

(h) Whenever a citation has been prepared, delivered and filed with a court as provided in this section, a duplicate copy of the citation constitutes a complaint to which the defendant shall answer. The duplicate copy shall be sworn to by the issuing officer before any person authorized by law to administer oaths.

(i) Nothing in this section shall be construed to affect a peace officer's authority to conduct a lawful search even though the citation is issued after arrest.

(j) Any person who intentionally, knowingly or willfully fails to appear in court on the date and time specified on the citation or who knowingly gives a false or assumed name or address commits a Class A misdemeanor, regardless of the disposition of the charge for which the person was originally arrested. Proof that the defendant failed to appear when required constitutes prima facie evidence that the failure to appear is willful.

(k) Whenever an officer makes a physical arrest for a misdemeanor and the officer determines that a citation cannot be issued because of one (1) of the seven (7) reasons enumerated in subsection (d), the officer shall note the reason for not issuing a citation on the arrest ticket. An officer who, on the basis of facts reasonably known or reasonably believed to exist, determines that a citation cannot be issued because of one (1) of the seven (7) reasons enumerated in subsection (d) shall not be subject to civil or criminal liability for false arrest, false imprisonment or unlawful detention.

(l)

(1) Each citation issued pursuant to this section shall have printed on it in large, conspicuous block letters the following:

NOTICE: FAILURE TO APPEAR IN COURT ON THE DATE ASSIGNED BY THIS CITATION OR AT THE APPROPRIATE POLICE STATION FOR BOOKING AND PROCESSING WILL RESULT IN YOUR ARREST FOR A SEPARATE CRIMINAL OFFENSE WHICH IS PUNISHABLE BY A JAIL SENTENCE OF ELEVEN (11) MONTHS AND TWENTY-NINE (29) DAYS AND/OR A FINE OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500).

(2) Each person receiving a citation under this section shall sign this citation indicating the knowledge of the notice listed in subdivision (*l*)(1). The signature of each person creates a presumption of knowledge of the notice and a presumption of intent to violate this section if the person should not appear as required by the citation.

(3) Whenever there are changes in the citation form notice required by this subsection (*l*), a law enforcement agency may exhaust its existing supply of citation forms before implementing the new citation forms.

(m) This section shall govern all aspects of the issuance of citations in lieu of the continued custody of an arrested person, notwithstanding any provision of Rule 3.5 of the Tennessee Rules of Criminal Procedure to the contrary.

(n) In cases in which:

(1) The public will not be endangered by the continued freedom of the suspected misdemeanant; and

(2) The law enforcement officer has reasonable proof of the identity of the suspected misdemeanant,

(3) [Deleted by 2019 amendment.]

the general assembly finds that the issuance of a citation in lieu of arrest of the suspected misdemeanant will result in cost savings and increased public safety by allowing the use of jail space for dangerous individuals and/or felons and by keeping officers on patrol. Accordingly, the general assembly encourages all law enforcement agencies to so utilize misdemeanor citations and to encourage their personnel to use those citations when reasonable and according to law.

40-11-150. Determination of risk to victim prior to release — Conditional release — Discharge of conditions — Notification to law enforcement.

(a) In addition to the factors set out in § 40-11-118, in making a decision concerning the amount of bail required for the release of a defendant who is arrested for the offense of child abuse, child neglect, or child endangerment, as defined in § 39-15-401, the offense of aggravated child abuse, aggravated child neglect, or aggravated child endangerment, as defined in § 39-15-402, the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a victim as defined in § 36-3-601(5), (10) or (11), or is in violation of an order of protection as authorized by title 36, chapter 3, part 6, the magistrate shall review the facts of the arrest and detention of the defendant and determine whether the defendant is:

(1) A threat to the alleged victim;

(2) A threat to public safety; and

(3) Reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with an offense specified in subsection (a), or a violation of an order of protection, the magistrate shall make findings on the record, if possible, concerning the determination made in accordance with subsection (a), and shall impose one (1) or more conditions of release or bail on the defendant to protect the alleged victim of any such offense and to ensure the appearance of the defendant at a subsequent court proceeding. The conditions may include:

(1) An order enjoining the defendant from threatening to commit or committing specified offenses against the alleged victim;

(2) An order prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;

(3) An order directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(4) An order prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;

(5) An order prohibiting the defendant from possession or consumption of alcohol, controlled substances or controlled substance analogues;

(6) An order requiring the defendant to carry or wear a global positioning monitoring system device and, if able, pay the costs associated with operating that device and electronic receptor device provided to the victim, pursuant to § 40-11-152; and

(7) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.

(c) Concurrent with the imposition of one (1) or more conditions of release, the magistrate shall:

(1) Issue a written order for conditional release containing the conditions of the release on a form prepared by the administrative office of the courts, in consultation with the Tennessee task force against domestic violence, and distributed to judges and magistrates by the administrative office of the courts;

(2) Immediately distribute a copy of the order to the law enforcement agency having custody of the defendant, which agency shall file and maintain the order in the same manner as is done for orders of protection; and

(3) Provide the law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.

(d) The law enforcement agency having custody of the defendant shall provide a copy of the conditions to the defendant upon the defendant's release. Failure to provide the defendant with a copy of the conditions of release does not invalidate the conditions if the defendant has notice of such conditions.

(e) If conditions of release are imposed without a hearing, the defendant may request a prompt hearing before the court having jurisdiction of the offense for which the defendant was arrested or is charged to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

(f) When a defendant who is arrested for or charged with an offense specified in subsection (a) or with a violation of an order of protection is released from custody, the law enforcement agency having custody of the defendant shall:

(1) Use all reasonable means to immediately notify the victim of the alleged offense of the release and of the address and telephone number of the nearest source of assistance to victims of domestic violence, including, but not limited to, shelters, counseling centers or other appropriate community resources; and

(2) Send the victim at the victim's last known address a copy of any conditions of release. If the victim is present at the time the conditions are imposed, a copy of the conditions may be given to the victim at that time; provided, that failure to furnish the victim a copy of any conditions of release shall not constitute negligence per se by the law enforcement agency.

(g) Release of a defendant who is arrested for or charged with a crime specified in subsection (a) or with a violation of an order of protection shall not be delayed because of the requirements of subsection (f).

(h)

(1) Any offender arrested for the offense of stalking, aggravated stalking, or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the alleged victim is a victim as defined in § 36-3-601, shall not be released within twelve (12) hours of the time of arrest. The magistrate or other official duly authorized to release the offender may, however, release the offender in less than twelve (12) hours if the official finds that the offender is not a threat to the alleged victim.

(2) The findings shall be reduced to writing. The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve-hour period required by this subsection (h).

(3) If the offender is released prior to the conclusion of the twelve-hour period, the official shall make all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be released prior to the conclusion of the twelve-hour period mandated in subdivision (h)(1).

(4) If an order of protection or restraining order has been issued against an offender arrested for an offense listed in subdivision (h)(1), but the offender has not been served with the order prior to incarceration, the offender shall be served whenever possible with the order prior to the offender's release from incarceration. If an order has not been served on the offender at the conclusion of the offender's twelve-hour holding period, the offender may be released, but the order shall be served as soon as possible after the release. Service remains valid on an offender if it is made after the offender is released from incarceration rather than while incarcerated for the twelve-hour hold period.

(i)

(1) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in § 40-7-103(b). If the violation of the condition of release also constitutes the offense of violation of a protective order as prohibited by § 39-13-113, the person shall be charged with the offense, and the bail of the person violating the condition of release may be revoked by the court having jurisdiction of the offense.

(2) If the violation of the condition or release does not also constitute a violation of § 39-13-113, the release condition violation shall be punished as contempt of the court imposing the conditions, and the bail of the person violating the condition of release may be revoked.

(j)

(1) If a defendant upon whom conditions of release have been imposed pursuant to this section is for any reason discharged or released from those conditions, the discharging or releasing court shall notify all law enforcement agencies within its jurisdiction that the defendant is no longer subject to the conditions originally imposed.

(2) The administrative office of the courts, in consultation with the domestic violence state coordinating council, shall prepare a discharge from conditions of release notification form to send to law enforcement agencies as required by subdivision (j)(1) and shall distribute the form to all courts with the authority to discharge or release a defendant from conditions of release.

(k)

(1) Any offender arrested for a violation of § 71-6-119, involving physical harm or abuse in which the alleged victim is an adult of advanced age as those terms are defined in § 71-6-102, or for a violation of § 39-15-507 or § 39-15-508 involving neglect or aggravated neglect shall not be released within twelve (12) hours of the time of arrest. The magistrate or other official duly authorized to release the offender may, however, release the offender in less than twelve (12) hours if the official finds that the offender is not a threat to the alleged victim.

(2) The findings shall be reduced to writing. The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of arrest in order to establish the beginning of the twelve-hour period required by this subsection (k).

(3) If the offender is released prior to the conclusion of the twelve-hour period, the official shall make all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be released prior to the conclusion of the twelve-hour period mandated in subdivision (k)(1).

(4)

(A) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in § 40-7-103(b). If the violation of the condition of release also constitutes the offense of violation of a protective order as prohibited by § 39-13-113, the person shall be charged with the offense, and the bail of the person violating the condition of release may be revoked by the court having jurisdiction of the offense.

(B) If the violation of the condition of release does not also constitute a violation of § 39-13-113, the release condition violation shall be punished as contempt of the court imposing the conditions, and the bail of the person violating the condition of release may be revoked.

(l)

(1)

(A) Any officer who has reason to believe that a defendant under arrest may pose a substantial likelihood of serious harm to the defendant or to others may make a recommendation to the community mental health crisis response service that the defendant be evaluated by a member of such service to determine if the defendant is subject to admission to a hospital or treatment resource pursuant to § 33-6-403.

(B) The assessment of the defendant by a member of a community mental health crisis response service shall be completed within twelve (12) hours from the time the defendant is in custody or the magistrate or other official with the authority to determine bail shall set bail and admit the defendant to bail, when appropriate. However, if the assessment is being conducted at the end of the twelve-hour period, the member of the community mental health crisis response service may complete the assessment. The magistrate or other official duly authorized to release the defendant may, however, release the accused in less than twelve (12) hours if the official determines that sufficient time has or will have elapsed for the victim to be protected.

(C) If the assessment of the defendant by the member of the community mental health crisis response service indicates that the defendant does not meet the standards of § 33-6-403, the officer who has reasonable cause to believe that the defendant may pose a substantial likelihood of serious harm shall so report to the magistrate or other official with the authority to determine bail and such magistrate or official shall set bail and admit the defendant to bail, when appropriate.

(2) The officer who has reasonable cause to believe that the defendant may pose a substantial likelihood of serious harm shall note the time the defendant was taken into custody for purposes of beginning the twelve-hour assessment period provided in subdivision (*l*)(1)(B).

(m)

(1) Following the arrest of a person for any criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a domestic abuse victim as defined in § 36-3-601, the court or magistrate shall make a finding whether there is probable cause to believe the respondent either:

(A) Caused serious bodily injury, as defined in § 39-11-106, to the alleged domestic abuse victim; or

(B) Used or displayed a deadly weapon, as defined in § 39-11-106.

(2) If the court or magistrate finds probable cause to believe that one (1) or both of the circumstances in subdivision (m)(1) did occur, unless the court or magistrate finds that the offender no longer poses a threat to the alleged victim or public safety, the court or magistrate shall impose the twelve-hour hold period and victim notification requirements in accordance with subsection (h).

(3) Prior to the offender's release on bond, the court or magistrate shall issue a no contact order containing all of the bond conditions set out in this section that are applicable to the protection of a domestic abuse victim.

40-15-105. Memorandum of understanding — Suspended prosecution.

(a) S

(1)

(A) A qualified defendant may, by a memorandum of understanding with the prosecution, agree that the prosecution will be suspended for a specified period, not to exceed two (2) years from the filing of the memorandum of understanding. As a condition of this suspension, the qualified defendant shall agree to pay ten dollars ($10.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant. The payments shall be made to the agency, department, program, group or association responsible for the supervision of defendant.

(B) For purposes of this section, "qualified defendant" means a defendant who meets each of the following requirements:

(i) The defendant has not previously been granted pretrial diversion under this chapter or judicial diversion under § 40-35-313;

(ii) The defendant does not have a prior conviction for a Class A or B misdemeanor or for any class of felony; and

(iii) The charged offense for which the prosecution is being suspended is not a felony or any of the following offenses:

(a) Driving under the influence of an intoxicant as prohibited by § 55-10-401;

(b) Any misdemeanor sexual offense prohibited by title 39, chapter 13, part 5;

(c) Conspiracy, under § 39-12-103, to commit any Class E felony sexual offense prohibited by title 39, chapter 13, part 5;

(d) Criminal attempt, under § 39-12-101, to commit any Class E felony sexual offense prohibited by title 39, chapter 13, part 5;

(e) Solicitation, under § 39-12-102 to commit any Class D or Class E felony sexual offense prohibited by title 39, chapter 13, part 5;

(f) Child abuse or child neglect or endangerment as prohibited by § 39-15-401;

(g) Domestic assault as prohibited by § 39-13-111; or

(h) Any misdemeanor offense committed by any elected or appointed person or employee in the executive, legislative, or judicial branch of the state or any political subdivision of the state, which offense was committed in the person's official capacity or involved the duties of the person's office.

(C) Notwithstanding the provisions of subdivision (a)(1)(A) to the contrary, in any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, the defendant shall pay a fee of not less than ten dollars ($10.00) nor more than thirty-five dollars ($35.00) per month, as determined by the court.

(2) Prosecution of the defendant shall not be suspended unless the parties in the memorandum of understanding also agree that the defendant observe one (1) or more of the following conditions during the period in which the prosecution is suspended:

(A) That the defendant not commit any offense;

(B) That the defendant not engage in specified activities, conduct and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(C) That the defendant participate in a supervised rehabilitation program which may include treatment, counseling, training and education;

(D) That in the proper case the defendant make restitution in a specified manner for harm or loss caused by the offense, if restitution is within the defendant's capabilities;

(E) That the defendant pay court costs in a specified manner;

(F) That the defendant pay, in addition to the payment of ten dollars ($10.00) per month required by this section, any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner based upon the defendant's ability to pay;

(G) That the defendant reside in a designated place including, but not limited to, a residential facility for persons participating in a particular program of rehabilitation if residence there is necessary in order to participate fully in the program;

(H) That the defendant behave in any specified manner consistent with good citizenship or other terms and conditions as may be agreed upon by the parties; and

(I)

(i) That for any memorandum entered into on or after July 1, 2014, the defendant use a transdermal monitoring device or other alternative monitoring device if, in the opinion of the district attorney general, the defendant's use of alcohol or drugs was a contributing factor in the defendant's unlawful conduct. If a memorandum entered into on or after July 1, 2016, requires the use of a transdermal monitoring device or other alternative monitoring device, before approving the memorandum, the judge shall determine if the defendant is indigent. If the court determines the defendant is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419;

(ii) As used in this subdivision (a)(2)(I), "transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

(3) The memorandum of understanding may include stipulations concerning the admissibility in evidence of specified testimony, evidence or depositions if the suspension of the prosecution is terminated and there is a trial on the charge. The memorandum of understanding shall also include a statement of the defendant's version of the facts of the alleged offenses. The defendant's statement of the facts relative to the charged offenses shall not be admissible as substantive evidence in any civil or criminal proceeding against the defendant who made the statement. However, evidence of the statement is admissible as impeachment evidence against the defendant who made the statement in any criminal proceeding resulting from the termination of the memorandum of understanding pursuant to subsection (d). No other confession or admission of the defendant obtained during the pendency of and relative to the charges contained in the memorandum of understanding shall be admissible in evidence for any purpose, other than cross-examination of the defendant. The memorandum of understanding shall be in writing signed by the parties and shall state that the defendant waives the right to a speedy trial, and the right to be indicted at any particular term of court and after July 1, 2004, if the individual is charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in § 68-11-1002, the memorandum of understanding or diversion order contains a provision that the individual agrees without contest or any further notice or hearing that the individual's name shall be permanently placed on the registry governed by § 68-11-1003, a copy of which shall be forwarded to the department of health. This filing shall toll any applicable statute of limitations during the pendency of the diversionary period.

(4) The pretrial diversion procedures are authorized and a memorandum of understanding may be permitted in the municipal courts of home rule municipalities where the defendant is charged with a misdemeanor and does not have a previous misdemeanor or felony conviction within the five-year period after completing the sentence or probationary program for the prior conviction. The procedures in those municipal courts shall be subject to the same terms and conditions, including those related to expenses and costs, as set forth in this subsection (a), and any expenses and costs paid by the defendants shall be paid to the clerk of the municipal court in which the proceedings were held.

(b)

(1) Promptly after the memorandum of understanding is made, the prosecuting attorney shall file it with the court, together with a notice stating that pursuant to the memorandum of understanding of the parties under this section and §§ 40-15-102 — 40-15-104, the prosecution is suspended for a period specified in the notice. Upon this filing, if the defendant is in custody, the

defendant may be released on bond or on the defendant's promise to appear if the suspension of prosecution is terminated and there is a trial on the charge. The memorandum of understanding must be approved by the trial court before it is of any force and effect.

(2) The trial court shall approve the memorandum of understanding unless the:

(A) Prosecution has acted arbitrarily and capriciously;

(B) Memorandum of understanding was obtained by fraud;

(C) Diversion of the case is unlawful; or

(D) Certificate from the Tennessee bureau of investigation required by § 40-15-106 is not attached.

(3) The defendant shall have a right to petition for a writ of certiorari to the trial court for an abuse of prosecutorial discretion. If the trial court finds that the prosecuting attorney has committed an abuse of discretion in failing to divert, the trial court may order the prosecuting attorney to place the defendant in a diversion status on the terms and conditions as the trial court may order. A defendant's diversion under such terms and circumstances may be terminated as provided by subsection (d) and shall be subject to all other provisions of this section.

(c) The parties by mutual consent may modify the terms of the memorandum of understanding at any time before its termination. Nothing in this section shall prohibit a behavioral contract or agreement setting out behavior or goals expected of and to be achieved by the defendant made between a counselor and defendant, but that agreement need not be filed with the court.

(d) The memorandum of understanding shall be terminated and the prosecution may resume as if there had been no memorandum of understanding if either the defendant or prosecuting attorney files a notice that the memorandum of understanding is terminated. If the memorandum of understanding is terminated by the prosecution, the defendant may petition the court to review the action of the prosecution to determine whether the prosecution acted arbitrarily, capriciously or abused its discretion to terminate. If the court so finds, it may order the defendant reinstated under the defendant's memorandum of understanding or order the pending charges dismissed with or without jeopardy attaching.

(e) The trial court shall dismiss with prejudice any warrant or charge against the defendant upon the expiration of ninety (90) days after the expiration of the period of suspension specified in the memorandum of understanding is filed; provided, that no termination of the memorandum of understanding has been filed under subsection (d). If the prosecution is dismissed with prejudice, jeopardy shall attach and the court shall make a minute entry to that effect. Upon dismissing any warrant or charge against the defendant pursuant to this section, the judge shall send or cause to be sent a copy of the order of dismissal to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial diversion database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor. The order of dismissal shall include the name of the defendant, the defendant's date of birth and social security number, the offense for which diversion was granted, the date diversion was granted and the date the charge or warrant was dismissed.

40-17-124. Sex offenses where victim is less than thirteen (13) years of age.

(a) Notwithstanding any rule or statute to the contrary, in a criminal case:

(1) If the defendant is charged with any sex offense specified in §§ 39-13-502 — 39-13-506; 39-13-511, provided that the offense of public indecency or indecent exposure constitutes a Class A misdemeanor or Class E felony violation; 39-13-513 — 39-13-516; 39-13-522; 39-13-527; 39-13-528; or 39-15-302; or is charged with the offense of attempting, soliciting or conspiring to commit any sex offense;

(2) If the victim is less than thirteen (13) years of age;

(3) If the defendant possesses a prior conviction for any sex offense described in §§ 39-13-502 — 39-13-506 and 39-13-511; provided, that the offense of public indecency or indecent exposure constitutes a Class A misdemeanor or Class E felony violation, 39-13-513 — 39-13-516; 39-13-522; 39-13-527; 39-13-528; or 39-15-302, or a prior conviction for attempting, soliciting or conspiring to commit any sex offense; and

(4) If the victim of the prior offense was also less than thirteen (13) years of age; then evidence of the defendant's prior conviction is admissible and may be considered for its bearing on any matter to which it is relevant, subject to Rule 403 of the Tennessee Rules of Evidence

(b) Notwithstanding any rule or statute to the contrary, in a case in which the state intends to offer evidence under this section, the state shall disclose the evidence to the defendant including a summary of the substance of any testimony that is expected to be offered, at least fifteen (15) days before the scheduled date of trial or at a later time as the court may allow for good cause.

(c) Nothing in this section shall be construed to limit the admissibility or consideration of evidence under any other rule or statute.

40-24-108. Sexual assault program services.

(a) When any person is convicted of a sexual offense as defined in subdivision (b)(2) on or after July 1, 2003, in addition to any other punishment that may be imposed for the sexual offense, the court shall impose a fine of two hundred dollars ($200). The additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding sexual assault program services pursuant to title 71, chapter 6, part 3.

(b)

(1) For purposes of this section, "convicted" means an adjudication of guilt for a sexual offense as defined in subdivision (b)(2) in any of the manners described:

(A) Plea of guilty, including a plea of guilty entered pursuant to § 40-35-313;

(B) Verdict of guilty by a judge or jury;

(C) Plea of no contest; or

(D) Best interest plea.

(2) "Sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-13-502;

(B) Rape, under § 39-13-503;

(C) Aggravated sexual battery, under § 39-13-504;

(D) Sexual battery, under § 39-13-505;

(E) Statutory rape, under § 39-13-506;

(F) Sexual exploitation of a minor, under § 39-17-1003;

(G) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(H) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(I) Incest, under § 39-15-302;

(J) Rape of a child, under § 39-13-522;

(K) Sexual battery by an authority figure, under § 39-13-527;

(L) Solicitation of a minor, under § 39-13-528;

(M) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (b)(2); or

(N) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (b)(2).

40-24-109. Services to victims of certain types of crimes.

(a) The county legislative body of any county may elect to establish a program to assist victims of crime, their families and survivors or to provide funding or additional funding for an existing program established to assist victims. The type of programs for which this section may be utilized includes rape crisis centers, domestic violence shelters, victim of crime hotlines and information programs, individual, group and family counseling services, crisis intervention programs, support groups and other similar programs designed to assist victims of crime, their families or survivors.

(b)

(1) If a county legislative body elects to establish or fund a program as authorized by this section, it shall, at the time of election, designate the program for which the assessment provided in subsection (c) will be used.

(2) No assessment authorized by subsection (c) shall be collected or transmitted until the county legislative body has elected to utilize this section and has designated the victim of crime program for which it will be dedicated.

(c) The clerks of all courts of general sessions, circuit and criminal courts, municipal courts exercising general sessions court jurisdiction and any other court exercising similar criminal jurisdiction shall collect a victims assistance assessment in the sum of forty-five dollars ($45.00) from any person who:

(1) Enters a plea of guilty;

(2) Is found guilty by a judge or jury;

(3) Enters a plea of nolo contendere;

(4) Enters a plea, pursuant to any of the diversionary sentencing statutes, to any criminal offense described in subsection (d);

(5) Is found guilty, or enters a plea of guilty or nolo contendere, to the offense of attempting or conspiring to commit any offense described in subsection (d); or

(6) Is found to be criminally responsible as principal for the commission of any offense described in subsection (d).

(d) Except as provided in subsection (e), subsection (c) shall apply to any conduct made criminal by the laws of this state.

(e) This section shall not apply to:

(1) Crimes for which the law imposes, as a maximum possible punishment, a fine of less than five hundred dollars ($500) and no imprisonment; and

(2) Violations of the motor vehicle laws, except driving under the influence of an intoxicant as prohibited by § 55-10-401, or reckless driving as prohibited by § 55-10-205, where the reckless driving was proximately caused by the use of an intoxicant.

(f) Whether a person convicted of a crime is exempted from payment of the assessment imposed by this section shall be determined by the offense for which the person was convicted and the maximum possible sentence authorized by law for the offense, rather than the sentence the person actually receives.

(g)

(1) The victims assistance assessment shall be subject to § 8-21-401 or § 8-21-409 and shall be in addition to all other taxes, costs, and fines. The first three dollars ($3.00) of each assessment shall be paid to the clerk of the court imposing the assessment for processing and handling. The remaining forty-two dollars ($42.00) shall be transmitted to the county in which the offense occurred, for the exclusive use of the victims assistance program previously designated by the county legislative body.

(2) Upon transmittal to the victims program in the county, all funds collected pursuant to this section shall be used to defray the costs of providing the services to victims of crime designated by the program's mission statement and guidelines.

(h) Nothing in this section shall be construed to prevent a county from funding more than one (1) program to assist victims of crime; provided, that no such program may be funded unless the provider organization offers services to victims of crime free of charge.

40-32-105. Expungement of person's public records involving offenses related to status as victim of human trafficking.

(a) Notwithstanding § 40-32-101, a person may file a petition for expunction of that person's public records involving offenses related to the person's status as a victim of human trafficking.

(b) In order to be eligible for expunction pursuant to this section, the petitioner must meet the following requirements:

(1) At the time of the filing of the petition for expunction at least one (1) year has elapsed since the completion of the sentence imposed for the petitioner's most recent criminal offense;

(2) The petitioner has fulfilled the following requirements of the sentence imposed by any court in which the individual was convicted of an offense:

(A) Completion of any term of imprisonment or probation;

(B) Meeting all conditions of supervised or unsupervised release; and

(C) If so required by the conditions of any of the sentences imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year;

(3) The petitioner has not been convicted of any criminal offense during the one (1) year prior to filing the petition and is not subject to any pending criminal charges;

(4) At least one (1) of the convictions to be expunged was for prostitution, as prohibited by § 39-13-513;

(5) The petitioner has not had public records previously expunged pursuant to this section;

(6) The convictions to be expunged:

(A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

(B) Did not involve the use or possession of a deadly weapon; and

(C) Are individually eligible for expunction under § 40-32-101(g); and

(7) Each of the convictions to be expunged resulted from the petitioner's status as a victim of human trafficking, under § 39-13-314. The petitioner may provide evidence of this requirement by testimony or affidavit. This subdivision (b)(7) does not require a conviction for an offense of which the petitioner was the victim. Any offense to be expunged must have occurred on or after the date on which the petitioner became a victim of human trafficking, as determined by the court.

(c) A person seeking expunction pursuant to this section must petition the court in which the person was most recently convicted of an offense. Upon filing of the petition, the clerk must serve the petition on the district attorneys general for each jurisdiction in which the petitioner has been convicted of an offense that is to be expunged. Not later than sixty (60) days after service of the petition, the district attorneys general may submit recommendations to the court and provide a copy of such recommendations to the petitioner.

(d) Both the petitioner and the district attorneys general may file evidence with the court relating to the petition. If necessary, the court may schedule a hearing for the purpose of taking testimony from the petitioner and any other interested persons. In making a decision on the petition, the court shall consider all evidence and weigh the interests of the petitioner against the best interests of justice and public safety.

(e) If the court determines that the petitioner meets the requirements of subsection (b) and that the expunction is in the best interests of justice and public safety, the court shall order the person's records involving convictions resulting from the person's status as a victim of human trafficking expunged.

(f) If the court denies the petition, the petitioner may not file another such petition until at least two (2) years from the date of the denial.

(g) The district attorneys general conference shall create, by September 1, 2019, a simple form to enable a lay person to petition the court for expunction under this section.

(h) The petition and proposed order must be prepared by the office of the district attorney general and given to the petitioner to be filed with the clerk of the court. A petitioner is entitled to a copy of the order of expunction and such copy is sufficient proof that the person named in the order is no longer under any disability, disqualification, or other adverse consequence resulting from the expunged convictions.

(i)

(1) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this section entitles the petitioner to have all public records of the expunged convictions destroyed in the manner set forth in this section.

(2) An expunction granted pursuant to this section has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial, and conviction for the expunged offenses. Once the expunction order is granted, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.

(3) A petitioner with respect to whom an order has been granted under this section is not guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction in response to any inquiry made of the petitioner for any purpose.

(4) As used in this section, expunction means, in contemplation of law, the conviction for the expunged offenses never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of the criminal offenses that were expunged.

(5) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a petitioner whose petition is granted pursuant to this section, and who is otherwise eligible under state or federal law to possess a firearm, is eligible to purchase a firearm pursuant to § 39-17-1316 and apply for and be granted a handgun carry permit pursuant to § 39-17-1351.

(j) The clerk of the court maintaining records expunged pursuant to this section shall keep such records confidential. The records are not public and may only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney, and the circuit or criminal court judge.

(k) Upon filing the petition, the petitioner shall pay the clerk of court a fee, as described in § 40-32-101(g)(9) [repealed].

40-35-111. Authorized terms of imprisonment and fines for felonies and misdemeanors.

(a) A sentence for a felony is a determinate sentence.

(b) The authorized terms of imprisonment and fines for felonies are:

(1) Class A felony, not less than fifteen (15) nor more than sixty (60) years. In addition, the jury may assess a fine not to exceed fifty thousand dollars ($50,000), unless otherwise provided by statute;

(2) Class B felony, not less than eight (8) nor more than thirty (30) years. In addition, the jury may assess a fine not to exceed twenty-five thousand dollars ($25,000), unless otherwise provided by statute;

(3) Class C felony, not less than three (3) years nor more than fifteen (15) years. In addition, the jury may assess a fine not to exceed ten thousand dollars ($10,000), unless otherwise provided by statute;

(4) Class D felony, not less than two (2) years nor more than twelve (12) years. In addition, the jury may assess a fine not to exceed five thousand dollars ($5,000), unless otherwise provided by statute; and

(5) Class E felony, not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand dollars ($3,000), unless otherwise provided by statute.

(c)

(1) A sentence to pay a fine, when imposed on a corporation for an offense defined in title 39 or for any offense defined in any other title for which no special corporate fine is specified, is a sentence to pay an amount, not to exceed:

(A) Three hundred fifty thousand dollars ($350,000) for a Class A felony;

(B) Three hundred thousand dollars ($300,000) for a Class B felony;

(C) Two hundred fifty thousand dollars ($250,000) for a Class C felony;

(D) One hundred twenty-five thousand dollars ($125,000) for a Class D felony; and

(E) Fifty thousand dollars ($50,000) for a Class E felony.

(2) If a special fine for a corporation is expressly specified in the statute that defines an offense, the fine fixed shall be within the limits specified in the statute.

(d) A sentence for a misdemeanor is a determinate sentence.

(e) The authorized terms of imprisonment and fines for misdemeanors are:

(1) Class A misdemeanor, not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars ($2,500), or both, unless otherwise provided by statute;

(2) Class B misdemeanor, not greater than six (6) months or a fine not to exceed five hundred dollars ($500), or both, unless otherwise provided by statute; and

(3) Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00), or both, unless otherwise provided by statute.

(f) In order to furnish the general assembly with information necessary to make an informed determination as to whether the increase in the cost of living and changes in income for residents of Tennessee has resulted in the minimum and maximum authorized fine ranges no longer being commensurate with the amount of fine deserved for the offense committed, every five (5) years, on or before January 15, the fiscal review committee shall report to the chief clerks of the senate and the house of representatives of the general assembly the percentage of change in the average consumer price index (all items-city average) as published by the United States department of labor, bureau of labor statistics and shall inform the general assembly what the statutory minimum and maximum authorized fine for each offense classification would be if adjusted to reflect the compounded cost-of-living increases during the five-year period.

40-35-116. Revocation of bail on conviction.

(a) If a defendant is convicted of first degree murder, a Class A felony, rape, aggravated robbery, aggravated sexual battery, aggravated kidnapping, aggravated child abuse, statutory rape by an authority figure or a violation of § 39-17-417(b) or (i), the judge shall revoke bail immediately, notwithstanding sentencing hearings, motions for a new trial and related post-guilt determination hearings.

(b) If a defendant is convicted of any other felony offense, the judge may revoke bail immediately, notwithstanding sentencing hearing, motion for a new trial and related post-guilt determination hearings.

(c) If the court revokes the defendant's bail, the defendant shall be housed in a local jail pending the sentencing determination. Following sentencing, the defendant shall be transferred to the custody of the authority to whom the defendant was sentenced.

(d) If a defendant is convicted of first degree murder, the judge may house the defendant in a local jail or may transfer custody to the department of correction pending further proceedings in the trial court.

40-35-302. Misdemeanor sentencing — Rehabilitative program credits — Probation — Supervision of defendants on probation.

(a) In imposing a sentence for a misdemeanor, the court may conduct a separate sentencing hearing. If the court does not conduct a separate sentencing hearing, the court shall allow the parties a reasonable opportunity to be heard on the question of the length of any sentence and the manner in which the sentence is to be served.

(b) In imposing a misdemeanor sentence, the court shall fix a specific number of months, days or hours, and the defendant shall be responsible for the entire sentence undiminished by sentence credits of any sort except for credits authorized by § 40-23-101, relative to pretrial jail credit, or §§ 33-5-406 and 33-7-102, relative to mental examinations and treatment, and credits awarded in accordance with either, but not both, § 41-2-111 or § 41-2-147. The court shall impose a sentence consistent with the purposes and principles of this chapter.

(c) When a defendant is serving a misdemeanor sentence, the defendant shall be continuously confined for the duration of the sentence except as provided in subsections (d) and (e); provided, that nothing in this section shall be construed as prohibiting a defendant, in the discretion of the workhouse superintendent or sheriff, from participating in work crews during the time the defendant is to be continuously confined.

(d) In imposing a misdemeanor sentence, the court shall fix a percentage of the sentence that the defendant shall serve. After service of such a percentage of the sentence, the defendant shall be eligible for consideration for work release, furlough, trusty status and related rehabilitative programs. The percentage shall be expressed as zero percent (0%), ten percent (10%), twenty percent (20%), thirty percent (30%), forty percent (40%), fifty percent (50%), sixty percent (60%), seventy percent (70%) but not in excess of seventy-five percent (75%). If no percentage is expressed in the judgment, the percentage shall be considered zero percent (0%). When the defendant has served the required percentage, the administrative authority governing the rehabilitative program shall have the authority, in its discretion, to place the defendant in the programs as provided by law. In determining the percentage of the sentence to be served in actual confinement, the court shall consider the purposes of this chapter, the principles of sentencing and the enhancement and mitigating factors set forth in this chapter and shall not impose such percentages arbitrarily.

(e) The court has authority to place the defendant on probation either:

(1) After service of a portion of the sentence in periodic confinement or continuous confinement; or

(2) Immediately after sentencing.

(f)

(1) The general sessions courts shall not place a defendant who is convicted of a misdemeanor on probation under the supervision of the state department of correction. Nothing in this subsection (f) is intended to restrict the use, where necessary, of any county or public probation service or private probation company established for the purpose of supervising defendants convicted of misdemeanors, unless the offender is currently being supervised by the state department of correction on a felony offense.

(2) When a person employed to provide probation services to defendants convicted of a misdemeanor, whether employed by a municipality, county, public or a private probation company, is first assigned a new probationer, the person shall conduct a search of the Tennessee bureau of investigation's sexual offender and violent sexual offender registration, verification and tracking database to determine if the probationer is a sexual offender or violent sexual offender. If so, the probation officer shall inform the sentencing judge of the probationer's status, if the status is not already known. If the probationer remains on probation, the officer shall also monitor the probationer's compliance with the requirements of § 40-39-211.

(g)

(1) Except as provided in subdivision (g)(2):

(A) A private entity that provides probation supervisory services shall be required to perform all of the following:

(i) Provide a report to the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services on a quarterly basis in a form and manner as is specified by the clerk; provided, that the report shall contain all of the information required in subdivision (g)(1)(G);

(ii) Provide an application form to all of the criminal court and general sessions court judges in each judicial district in which the entity proposes to provide misdemeanor probation services. The application shall be on a form and in a manner specified by the judges and shall contain all of the information required by subdivision (g)(1)(E);

(iii) Supervise all misdemeanor defendants sentenced by a proper order of probation to be supervised by the entity and to assist the defendants so sentenced in completing all court-ordered conditions of probation;

(iv) Maintain documentation on all misdemeanor defendants sentenced to be supervised by the entity. All books, records, and documentation maintained by the entity relating to work performed or money received for the supervision of misdemeanor defendants so sentenced must be maintained for a period of three (3) full years from the date of the final payment or audit. The books, records, and documentation are subject to a fiscal and performance audit and review at any reasonable time and upon reasonable notice by the court or courts in which the entity operates, or by their duly appointed representatives, and by the comptroller of the treasury as deemed necessary or appropriate. The comptroller of the treasury may appoint a certified public accountant to prepare the audit. The entity being audited by either the comptroller of the treasury or the comptroller's designee shall pay the cost of the audit. Officials of the entity shall cooperate fully with the comptroller of the treasury or its designee in the performance of the audit; and

(v) Any additional duties that the judge or judges of the courts for which the entity provides misdemeanor probation supervisory services may in writing require;

(B) The following minimum education standards are required for certain employees of an entity established for the purpose of supervising misdemeanor probationers:

(i) The chief executive officer of an entity offering probation supervision shall have a bachelor's degree from an accredited university in any of the following fields: criminal justice, administration, social work or the behavioral sciences and two (2) years of experience in criminal justice or social work; provided, that four (4) years of professional administrative experience with an organization providing services in criminal justice or social work may be substituted for the bachelor's degree; and

(ii) An employee responsible for providing probation supervision and employed by an entity shall have at least four (4) years of experience in a criminal justice or a social services agency providing counseling services or shall have a bachelor's degree or associate's degree from an accredited college or university;

(C) Any entity providing probation supervisory services shall post a liability insurance policy and a performance bond in the amounts stated:

(i) A liability insurance policy in an amount at least equal to the limits of governmental liability established in the Governmental Tort Liability Act, compiled in title 29, chapter 20, that is in effect on the date the services are provided. Nothing in this subdivision (g)(1)(C)(i) shall be construed as prohibiting the entity from carrying a liability insurance policy in excess of the limits of liability provided in the Governmental Tort Liability Act. The policy shall be for the purpose of reimbursing an injured or aggrieved party for any damages or expenses for which the entity providing probation supervisory services is found liable by a court of competent jurisdiction;

(ii) A performance bond issued by a corporate surety in the amount of twenty-five thousand dollars ($25,000). The bond shall be to provide recourse to the governmental entity for which the entity is providing probation supervisory services in the event of nonperformance, default, bankruptcy or failure of the entity to perform the required services;

(iii) The comptroller of the treasury shall design a uniform performance bond form to be used by all private entities providing misdemeanor probation supervisory services in this state;

(iv) A copy of the liability insurance policy and the performance bond shall be filed with the clerk of all courts in each county in which the entity proposes to provide probation supervisory services;

(D) Any entity providing or proposing to provide misdemeanor probation services shall investigate the criminal record for each employee and shall include in its application form any criminal conviction of each employee;

(E) The application form required by subdivision (g)(1)(A)(ii) shall contain the following information:

(i) The title of the entity;

(ii) Its form of business organization;

(iii) The office and mailing address of the entity;

(iv) The names of the employees who will provide services and their position with the entity and their credentials;

(v) A sworn statement that the credentials of all employees meet the minimum standards under subdivision (g)(1)(B);

(vi) A sworn statement that a criminal record search has been conducted and, if a criminal conviction has been discovered, the name of the employee and the criminal conviction;

(vii) A credit history of the entity including any judgments or lawsuits; and

(viii) A description of the services to be provided by the entity and the fee structure for the services to be provided;

(F) The application required by subdivision (g)(1)(A)(ii) shall also contain an affidavit filed under penalties of perjury that it is complete and accurate and contains all of the information required by subdivision (g)(1)(E). The application with the affidavit shall be filed with the clerk of the criminal court and general sessions court in each judicial district in which the entity proposes to provide misdemeanor probation services;

(G) The quarterly report required to be filed pursuant to subdivision (g)(1)(A)(i) shall include the following information:

(i) The caseload for the entity;

(ii) The number of contact hours with offenders;

(iii) The services provided;

(iv) The number of filings for probation revocation and their dispositions;

(v) A financial statement including administrative costs and service costs; and

(vi) Contributions, if any, to the criminal injuries compensation fund;

(H)

(i) It is an offense for a governmental employee, including a judge, or the employee's immediate family, to have a direct or indirect personal interest in a private entity that provides probation supervisory services or to receive anything of value in an individual capacity from the entity;

(ii) It is an offense for a private entity that provides probation supervisory services to give or offer to give anything of value to a governmental employee, including a judge, or the employee's immediate family, in the employee's individual capacity;

(iii) A violation of subdivision (g)(1)(H)(i) or (g)(1)(H)(ii) is a Class C misdemeanor; and

(iv) This section shall not be construed to amend or abridge any contract or operating agreement between any court or county government and any agency or individual presently supplying probation supervisory services to a court or county government pursuant to this chapter;

(I) No private corporation, enterprise, or agency contracting to provide probation services under this section shall engage in any of the following:

(i) Any employment, business or activity that interferes or conflicts with the duties and responsibilities under the contracts authorized by this section;

(ii) No corporation, enterprise or agency shall have personal business dealings, including, but not limited to, lending money, with probationers under its supervision; and

(iii) No corporation, enterprise or agency shall permit any person to supervise a probationer who is a member of the supervisory personnel's immediate family;

(J) As used in this subdivision (g)(1), "immediate family" means and includes the supervisor's mother, father, siblings, adult children or maternal and paternal grandparents.

(2) Except for fiscal and performance audits and reviews conducted by the comptroller of the treasury or the comptroller's designee in accordance with subdivision (g)(1)(A)(iv), subdivision (g)(1) does not apply in counties having a population, according to the 1990 federal census or any subsequent federal census, of:

not less than	nor more than
4,700	4,750
7,100	7,175
27,500	27,750
31,500	31,800
31,900	32,200
34,500	34,730
40,200	40,500

(h) As used in this section, the term "governmental employee" means employees and officials of the state and its political subdivisions who are employed as law enforcement employees or officials, probation and parole employees or officials, judicial employees or officials or correctional employees or officials, including employees and officials of jails and workhouses.

(i)

(1) As used in this subsection (i), "sterilization" means the process of rendering an individual incapable of sexual reproduction by castration, vasectomy, salpingectomy, or some other procedure and includes endoscopic techniques for female sterilization that can be performed outside of a hospital without general anesthesia such as culdoscopic, hysteroscopic, and laparoscopic sterilization.

(2) A sentencing court shall not make a sentencing determination that is based in whole or in part on the defendant's consent or refusal to consent to any form of temporary or permanent birth control, sterilization, or family planning services, regardless of whether the defendant's consent is voluntarily given.

(3) This subsection (i) shall not apply to the provision of educational services on the matters of temporary or permanent birth control, sterilization, or family planning services.

(j) A judge shall, at the time of sentencing, notify a person convicted of a misdemeanor offense that is eligible for expunction of:

(1) The person's eligibility to have all public records of the conviction destroyed in the manner set forth in § 40-32-101; and

(2) The time period after which the person can petition for expunction of the offense.

40-35-303. Probation — Eligibility — Terms.

(a) A defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less; however, no defendant shall be eligible for probation under this chapter if convicted of a violation of § 39-13-213(a)(2), § 39-13-304, § 39-13-402, § 39-13-504, § 39-13-532, § 39-15-402, § 39-17-417(b) or (i), § 39-17-1003, § 39-17-1004 or § 39-17-1005. A defendant shall also be eligible for probation pursuant to § 40-36-106(e)(3).

(b) A court shall have authority to impose probation as part of its sentencing determination at the conclusion of the sentencing hearing. There shall be no petition for probation filed by the defendant and probation shall be automatically considered by the

court as a sentencing alternative for eligible defendants; provided, that nothing in this chapter shall be construed as altering any provision of present statutory or case law requiring that the burden of establishing suitability for probation rests with the defendant

(c)

(1) If the court determines that a period of probation is appropriate, the court shall sentence the defendant to a specific sentence but shall suspend the execution of all or part of the sentence and place the defendant on supervised or unsupervised probation either immediately or after a period of confinement for a period of time no less than the minimum sentence allowed under the classification and up to and including the statutory maximum time for the class of the conviction offense.

(2)

(A) Except as provided in subdivision (c)(2)(B), if probation is to be granted to a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C), subdivision (c)(1) shall govern the length of the term of probation.

(B) Notwithstanding subdivision (c)(2)(A), the judge may sentence a defendant convicted of any of the misdemeanor offenses set out in subdivision (c)(2)(C) to a period of probation not to exceed two (2) years, if the judge finds that the period of probation is necessary:

(i) For the defendant to complete any appropriate treatment program or programs, including, but not limited to, a sanctioned batterer's intervention program, an anger management program or any court-ordered drug or alcohol treatment program;

(ii) To make restitution to the victim of the offense;

(iii) To otherwise effect a change in the behavior of the defendant, including, but not limited to, imposing any of the conditions set forth in subsection (d); or

(iv) To protect and better ensure the safety of the victim or any other member of the victim's family or household, as set out in subsections (m) and (n).

(C) The offenses to which this subdivision (c)(2) applies are:

(i) Domestic assault, as prohibited by § 39-13-111;

(ii) Assault as prohibited by § 39-13-101, vandalism as prohibited by § 39-14-408, or false imprisonment as prohibited by § 39-13-302, where the victim of the offense is a person identified in § 36-3-601(5);

(iii) Violation of a protective order, as prohibited by § 36-3-612;

(iv) Stalking, as prohibited by § 39-17-315; and

(v) A second or third violation of § 55-10-401 if the judge orders a substance abuse treatment program as a condition of probation pursuant to § 55-10-402(a)(2)(B) or (a)(3)(B).

(d) Whenever a court sentences an offender to supervised probation, the court shall specify the terms of the supervision and may require the offender to comply with certain conditions that may include, but are not limited to:

(1) Meet the offender's family responsibilities;

(2) Devote the offender to a specific employment or occupation;

(3) Perform, without compensation, services in the community for charitable or governmental agencies;

(4) Undergo available medical or psychiatric treatment and enter and remain in a specified institution whenever required for that purpose by voluntary self-admission to the institution pursuant to § 33-6-201;

(5) Pursue a prescribed secular course of study or vocational training;

(6) Refrain from possessing a firearm or other dangerous weapon;

(7) Remain within prescribed geographical boundaries and notify the court or the probation officer of any change in the offender's address or employment;

(8) Submit to supervision by an appropriate agency or person and report as directed by the court;

(9) Satisfy any other conditions reasonably related to the purpose of the offender's sentence and not unduly restrictive of the offender's liberty or incompatible with the offender's freedom of conscience, or otherwise prohibited by this chapter;

(10) Make appropriate and reasonable restitution to the victim or the family of the victim involved pursuant to § 40-35-304;

(11)

(A) Undergo an alcohol and drug assessment or treatment, or both an assessment and treatment, if the court deems it appropriate and licensed treatment service is available;

(B) Unless the court makes a specific determination that the person is indigent, the expense of the assessment and treatment shall be the responsibility of the person receiving it. If the court finds that the person is indigent under the same standards as used in § 55-10-402(j), the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund provided in § 40-33-211, pursuant to a plan and procedures developed by the department of mental health and substance abuse services; or

(12)

(A) Use a transdermal monitoring device or other alternative monitoring device if the court determines that the defendant's use of alcohol or drugs was a contributing factor in the defendant's unlawful conduct and the defendant is granted probation on or after July 1, 2014. If the defendant is granted probation on or after July 1, 2016, and the court orders a monitoring device but determines that the person is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419;

(B) As used in this subdivision (d)(12), "transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

(e) Probation shall be granted, if at all, at the time of the sentencing hearing except for sentences served in a local jail or workhouse, or except during the time a defendant sentenced to the department of correction is being housed in a local jail or workhouse awaiting transfer to the department as provided in § 40-35-212(d).

(f) The trial judge shall not have the authority to require that the defendant either secure or pay the costs accrued in the case at the instance of the state as a condition of conducting a hearing on the defendant's request for suspension of sentence and probation.

(g) The powers granted in this section shall be exercised by the judge of the trial court presiding at the trial of original conviction or by any successor judge holding court in that jurisdiction.

(h) No probationer shall be allowed to leave the jurisdiction of the probationer's probation officer without the express permission of the trial judge.

(i)

(1) In misdemeanor cases, as a condition precedent, the defendant must pay not less than ten dollars ($10.00) nor more than forty-five dollars ($45.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant. The payment shall be made to the clerk of the court in which proceedings against the defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds. The court may order the payments to be made directly to the agency, department, program, group or association responsible for the supervision of the defendant in lieu of making the payments to the clerk of the court.

(2) In addition to the costs imposed by subdivision (i)(1), the court may require the defendant to pay any or all costs for the defendant's supervision, counseling or treatment in a specified manner, based on the defendant's ability to pay.

(3) Willful failure to pay the supervision fee imposed by this subsection (i) to the supervising entity shall be grounds for revocation of probation and the supervising entity shall report all instances of nonpayment to the sentencing court.

(j) The provisions of this section relative to the payment of a supervision fee shall not apply to any person subject to chapter 28, part 2 of this title.

(k) The commissioner of correction, sheriff, warden, superintendent or other official having authority and responsibility for convicted defendants may contract with any appropriate public or private agency not under the commissioner's, sheriff's, warden's, superintendent's or other official's control for custody, care, subsistence, education, treatment or training of the defendants. The cost of the contract services shall be paid by the appropriate state or local entity to the department or the local jail or workhouse.

(l) A probation officer shall make reasonable and diligent effort to notify a victim of any felony that involved violence or the threat of violence that the defendant convicted of that offense is statutorily eligible for probation and that a hearing will be held to determine whether the defendant should be granted probation. The notice shall be given at least three (3) days prior to the hearing. If the victim is less than eighteen (18) years of age or is otherwise unavailable, the probation officer shall make all reasonable and diligent efforts to so notify the family, if any, of the victim.

(m) In determining whether a person convicted of the offense of stalking, aggravated stalking or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the victim falls within the definition set forth in § 36-3-601(5), should be granted probation, the court shall consider the safety and protection of the victim of the offense and of any other member of the victim's family or household.

(n) If the court grants probation to a person convicted of an offense specified in subsection (m), it may condition the probation on compliance with one (1) or more orders of the court, including, but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other household members;

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting or otherwise communicating, either directly or indirectly, with the victim;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and by any designated family or household member;

(4) Prohibiting the perpetrator from possessing or consuming alcohol, controlled substances or controlled substance analogues; and

(5) Prohibiting the perpetrator from using or possessing a firearm or any other specified weapon and requiring the perpetrator to surrender and forfeit any weapon currently possessed.

(o)

(1) Probation officers meeting the requirements of this subsection (o) shall have the authority to serve warrants and make arrests solely relating to their duties as probation officers. A probation officer shall also have the authority to bring probationers before the court when directed by the court to do so. While acting in the performance of their duties as probation officers, the probation officers shall have the same authority as a peace officer while serving warrants and making arrests that relate solely to their duties as probation officers

(2) Subdivision (o)(1) shall only apply to a probation officer:

(A) In any county having a charter form of government with a population of less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(B) Employed by a probation office operated by a governmental entity;

(C) Who has completed training equal to the training required by the standards of the peace officer's standards and training commission (POST); and

(D) Who successfully completes at least forty (40) hours of appropriate in-service training each year.

(3) Because a probation officer meets the standards and requirements of subdivision (o)(2) does not mean the officer is eligible for the pay supplement for state certified officers authorized in § 38-8-111.

(4) This subsection (o) shall not apply to a state probation officer employed by the department of correction and paid by the state of Tennessee.

(p)

(1) If a defendant is granted probation pursuant to this section and is released to the department charged by law with the supervision of probationers, the department may contract with an approved private probation provider to furnish probation supervision and services to such defendant if:

(A) The defendant's conviction offense was for a Class E felony; and

(B) The caseloads of state probation officers where the defendant is being supervised are high, resulting in the likelihood that the probationer may receive increased supervision and services from a private probation provider; or

(C) The private probation provider offers specialized services, treatment or training that would be beneficial to a probationer but would not be available if the probationer is supervised by the department.

(2) To contract with the department for the supervision of felons described in subdivision (p)(1)(A), a private probation provider shall:

(A) Meet all qualifications established by the private probation council for entities providing misdemeanor probation services;

(B) Keep all records in an electronic format that is accessible upon demand by an approved state agency;

(C) Maintain professional liability insurance of not less than one million dollars ($1,000,000) in addition to a general liability policy; and

(D)

(i) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least fifteen (15) years; or

(ii) Have been a private provider of misdemeanor probation services for courts exercising criminal jurisdiction in this state for at least two (2) years and a state probation officer for at least thirteen (13) years.

(3)

(A) A private probation provider who meets the requirements of subdivision (p)(2) and who wants to contract with the department to provide probation services to felons described in subdivision (p)(1)(A), may register with the department and the private probation council.

(B) At the time of registration, the private provider shall submit to the department and council:

(i) Such documentation as is necessary to demonstrate that it meets the requirements of subdivision (p)(2); and

(ii) A specific plan demonstrating how the use of such provider to supervise and provide services to felons described in subdivision (p)(1)(A), who have been granted probation will further the overall goal of reducing the recidivism rate of probationers. Such plan shall also contain statistics for misdemeanor probation services provided by the private provider for the previous ten (10) years. At a minimum, the statistics contained in the plan shall contain the same information required to be maintained by subdivision (p)(5).

(C) If the documentation and recidivism rate reduction plan presented by the private provider demonstrates that it meets the requirements of subdivision (p)(2), the department and council shall approve the private provider and place such provider on a list of companies eligible to contract with the department pursuant to this subsection (p).

(4) A supervision contract authorized by this section shall be between the private provider and the department. Once the court grants a person's petition for probation, the department shall be the sole entity that determines who supervises the probationer. No probationer meeting the criteria set out in subdivision (p)(1)(A) shall be placed under the supervision of or supervised by a private provider that has not contracted with the department and is not on the list of companies approved by the department and the council.

(5) Any private provider who contracts with the department pursuant to this subsection (p) shall maintain statistics on the probationers supervised pursuant to this subsection (p) and shall submit a quarterly report of such statistics to the person or agency designated by the department. The statistics shall include, but not be limited to:

(A) The number of felony probationers described in subdivision (p)(1)(A) the private provider has contracted to supervise;

(B) The style of the case which resulted in the defendant being placed on probation;

(C) The number of felons described in subdivision (p)(1)(A), whose probation was revoked prior to the end of supervision; and

(D) The recidivism rate of the felony probationers supervised by the private provider under a contract authorized by this subsection (p).

(6)

(A) A private provider contracting to supervise felons described in subdivision (p)(1)(A) may charge a supervision fee not to exceed sixty dollars ($60.00) per month. However, if a probationer cannot afford all or part of the supervision fee, the probationer may go before the court placing the defendant on probation and petition that it be waived or reduced. For good cause shown, the court may waive or reduce the supervision fee in appropriate cases.

(B) Willful nonpayment of the supervision fee to the private probation provider shall be grounds for revocation and the provider shall report instances of nonpayment to the department in the manner specified in the contract.

(7) No employee of a private provider of probation services shall supervise a felon described in subdivision (p)(1)(A) unless the employee has a bachelor of science degree from an accredited college or university or at least two (2) years of related work experience.

(8) This subsection (p) shall not apply to offenders who are governed by the Interstate Compact for Supervision of Adult Offenders, codified in § 40-28-401. The supervision of those offenders shall be controlled by the compact.

40-35-313. Probation — Conditions — Discharge and dismissal — Expunction from official records — Fee.

(a)

(1)

(A) The court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the qualified defendant. The deferral shall be for a period of time not less than the period of the maximum sentence for the misdemeanor with which the person is charged or not more than the period of the maximum sentence of the felony with which the person is charged. The deferral is conditioned upon the defendant paying an amount to be determined by the court of not less than ten dollars ($10.00) nor more than thirty-five dollars ($35.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, and upon the defendant paying any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. The payments shall be made to the clerk of the court in which proceedings against the defendant were pending, who shall send the payments to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment. The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds as provided in this subdivision (a)(1)(A).

(B)

(i) As used in this subsection (a), "qualified defendant" means a defendant who:

(a) Is found guilty of or pleads guilty or nolo contendere to the offense for which deferral of further proceedings is sought;

(b) Is not seeking deferral of further proceedings for any offense committed by any elected or appointed person in the executive, legislative or judicial branch of the state or any political subdivision of the state, which offense was committed in the person's official capacity or involved the duties of the person's office;

(c) Is not seeking deferral of further proceedings for a sexual offense, a violation of § 39-15-502, § 39-15-508, § 39-15-511, or § 39-15-512, driving under the influence of an intoxicant as prohibited by § 55-10-401, vehicular assault under § 39-13-106 prior to service of the minimum sentence required by § 39-13-106, or a Class A or B felony;

(d) Has not previously been convicted of a felony or a Class A misdemeanor for which a sentence of confinement is served; and

(e) Has not previously been granted judicial diversion under this chapter or pretrial diversion.

(ii) As used in subdivision (a)(1)(B)(i)(*c*), "sexual offense" means conduct that constitutes:

(a) Aggravated prostitution, as described in § 39-13-516;

(b) Aggravated rape, as described in § 39-13-502;

(c) Aggravated sexual battery, as described in § 39-13-504;

(d) Aggravated sexual exploitation of a minor, as described in § 39-17-1004;

(e) Attempt, as described in § 39-12-101, solicitation, as described in § 39-12-102 or conspiracy, as described in § 39-12-103, to commit any of the offenses enumerated in this subdivision (a)(1)(B)(ii);

(f) Especially aggravated sexual exploitation of a minor, as described in § 39-17-1005;

(g) Rape, as described in § 39-13-503;

(h) Rape of a child, as described in § 39-13-522;

(i) Sexual battery by an authority figure, as described in § 39-13-527;

(j) Sexual exploitation of a minor, as described in § 39-17-1003;

(k) Statutory rape by an authority figure, as described in § 39-13-532; or

(l) Incest, as described in § 39-15-302.

(iii)

(a) As used in this subsection (a), "reasonable conditions" includes, but is not limited to, the use of a transdermal monitoring device or other alternative monitoring device for all qualified defendants granted deferral pursuant to this section on or after July 1, 2014, if the court determines that the defendant's use of alcohol or drugs was a contributing factor in the defendant's unlawful conduct. If the court requires a qualified defendant to use a transdermal monitoring device or other alternative monitoring device on or after July 1, 2016, as a condition of the defendant's release, and the court determines the defendant is indigent, the court shall order that the portion of the costs of the device that the person is unable to pay be paid by the electronic monitoring indigency fund, established in § 55-10-419. "Transdermal monitoring device" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (½) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

(b) As used in this subsection (a), "reasonable conditions" also includes, but is not limited to, the requirement that a qualified defendant serve a period or periods of confinement in the local jail or workhouse not to exceed a total of thirty (30) days.

(2) The provisions of this subsection (a) relative to the payment of a supervision fee shall not apply to any person subject to chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during the period of probation, the person does not violate any of the conditions of the probation, then upon expiration of the period, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this subsection (a) is without court adjudication of guilt, but a nonpublic record of the discharge and dismissal is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this subsection (a) or for the limited purposes provided in subsections (b) and (c). The discharge and dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsections (b) and (c). Discharge and dismissal under this subsection (a) may occur only once with respect to any person.

(3)

(A) No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court on or after July 1, 1998, unless there is attached to it a certificate from the Tennessee bureau of investigation stating that the defendant does not have a prior felony or Class A misdemeanor conviction. No order deferring further proceedings and placing the defendant on probation as authorized by this subsection (a) may be entered by the court if the defendant was charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in § 68-11-1002 on or after July 1, 2004, and prior to July 1, 2018, or charged with a violation of § 39-15-507 on or after January 1, 2019, or § 39-15-510 on or after July 1, 2019, unless the order contains a provision that the defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by § 68-11-1003 a copy of which shall be forwarded to the department of health.

(B) The certificate provided by the bureau pursuant to subdivision (a)(3)(A) is only a certification that according to its expunged criminal offender and pretrial diversion database the defendant is not disqualified from deferral and probation under this section by virtue of a prior felony or Class A misdemeanor conviction. The certificate is not a certification that the defendant is eligible for the deferral and probation, and it shall continue to be the duty of the district attorney general, and judge to make sufficient inquiry into the defendant's background to determine eligibility.

(b) Upon the dismissal of the person and discharge of the proceedings against the person under subsection (a), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the court under subsection (a) and the public records that are defined in § 40-32-101(b), all recordation relating to the person's arrest, indictment or information, trial, finding of guilty and dismissal and discharge pursuant to this section; provided, that no records of a person who is dismissed from probation and whose proceedings are discharged pursuant to this section shall be expunged if the offense for which deferral and probation was granted was a sexual offense as defined by § 40-39-202. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expunction. If the court determines, after hearing, that the person was dismissed and the proceedings against the person discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person as to whom the order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge the arrest, or indictment or information, or trial in response to any inquiry made of the person for any purpose, except when the person who has been availed of the privileges of expunction then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the nonpublic records are admissible for the following purposes:

(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and

(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the nonpublic records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction.

(c) Notwithstanding this section or § 40-32-101(a)(3)-(c)(3) to the contrary, a plea of guilty or a verdict of guilty by a judge or jury for a criminal felony offense involving an act of terrorism or any other felony offense involving violence, coercion, dishonesty or the disruption of the operations of a state or local government is admissible into evidence in a civil action for the purpose of impeaching the truthfulness, veracity or credibility of a witness if the plea or verdict occurred within ten (10) years of the date the

evidence is sought to be admitted and the witness is a party to the civil action. The plea or verdict is admissible for the purposes set out in this subsection (c) notwithstanding the fact that the public records of the plea or verdict have been expunged pursuant to this section either prior to or after the commencement of the civil action at which the plea or verdict is sought to be admitted. In addition, the nonpublic records retained by the court, Tennessee bureau of investigation or a local law enforcement agency shall constitute official records of plea or verdict and are subject to the subpoena power of the courts of civil jurisdiction.

(d)

(1) Any court dismissing charges against a person and ordering the expunction of a person's public records following the discharge of proceedings pursuant to this section after October 1, 1998, shall send or cause to be sent a copy of the dismissal and expunction order to the Tennessee bureau of investigation for entry into its expunged criminal offender and pretrial diversion database; provided, however, that the court shall not be required to send to the bureau a copy of any dismissal and expunction order dated on or after July 1, 1999, if the charge dismissed is classified as a Class B or C misdemeanor. The order shall contain the name of the person seeking dismissal and expunction, the person's date of birth and social security number, the offense that was dismissed and the date the dismissal and expunction order is entered.

(2) [Deleted by 2019 amendment.]

40-35-321. Collection of biological specimens for DNA analysis — Persons convicted of certain offenses — Condition of release from imprisonment.

(a) As used in this section, unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(b) When a court sentences a person convicted of violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522, § 39-13-531 or § 39-15-302 or when a juvenile court adjudicates a person to be a delinquent child for violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522, § 39-13-531 or § 39-15-302, it shall order the person to provide a biological specimen for the purpose of DNA analysis as defined in subsection (a). If the person is not incarcerated at the time of sentencing, the order shall require the person to report to the probation division of the department charged by law with the supervision of probationers, which shall gather the specimen. If a probation officer is not available to gather the specimen, the court may designate a person to do so. The cost of taking, processing and storing the specimen shall be paid by the defendant and shall be collected by the probation officer in the same manner as other fees. If the person is incarcerated at the time of sentencing, the order shall require the chief administrative officer of the institution of incarceration to designate a qualified person to gather the specimen. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation, which shall maintain it as provided in § 38-6-113. The court shall make the providing of the specimen a condition of probation or community correction if either is granted.

(c) If a person convicted of violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522 or § 39-15-302 and committed to the custody of the commissioner of correction for a term of imprisonment has not provided a biological specimen for the purpose of DNA analysis as defined in subsection (a), the commissioner or the chief administrative officer of a local jail shall order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation which shall maintain it as provided in § 38-6-113. No person shall be released on parole or otherwise unless and until the person has provided the specimen required by this subsection (c).

(d)

(1) When a court sentences a person convicted of any felony offense committed on or after July 1, 1998, or any misdemeanor offense, the conviction for which requires the defendant to register as a sexual offender pursuant to chapter 39, part 2 of this title, on or after July 1, 2007, it shall order the person to provide a biological specimen for the purpose of DNA analysis as defined in subsection (a). If the person is not incarcerated at the time of sentencing, the order shall require the person to report to the probation division of the department charged by law with the supervision of probationers, which shall gather the specimen. If a probation officer is not available to gather the specimen, the court may designate a person to do so. The cost of taking, processing and storing the specimen shall be paid by the defendant and shall be collected by the probation officer in the same manner as other fees. If the person is incarcerated at the time of sentencing, the order shall require the chief administrative officer of the institution of incarceration to designate a qualified person to gather the specimen. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of

investigation, which shall maintain it as provided in § 38-6-113. The court shall make the providing of the specimen a condition of probation or community correction if either is granted.

(2) If a person convicted of any felony offense or any applicable misdemeanor offense and committed to the custody of the commissioner of correction for a term of imprisonment or sentenced to a period of confinement in a county jail or workhouse has not provided a biological specimen for the purpose of DNA analysis as defined in subsection (a), the commissioner or the chief administrative officer of a local jail may order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation, which shall maintain it as provided in § 38-6-113.

(e)

(1) When a person is arrested on or after January 1, 2008, for the commission of a violent felony as defined in subdivision (e)(3), the person shall have a biological specimen taken for the purpose of DNA analysis to determine identification characteristics specific to the person as defined in subsection (a). After a determination by a magistrate or a grand jury that probable cause exists for the arrest, but prior to the person's release from custody, the arresting authority shall take the sample using a buccal swab collection kit for DNA testing. The biological specimen shall be collected by the arresting authority in accordance with the uniform procedures established by the Tennessee bureau of investigation, pursuant to § 38-6-113 and shall be forwarded by the arresting authority to the Tennessee bureau of investigation, which shall maintain the sample as provided in § 38-6-113. The court or magistrate shall make the provision of a specimen a condition of the person's release on bond or recognizance if bond or recognizance is granted.

(2) The clerk of the court in which the charges against a person described in subdivision (e)(1) are disposed of shall notify the Tennessee bureau of investigation of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, then the bureau shall destroy the sample and all records of the sample; provided, that there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

(3) As used in this subsection (e), "violent felony" means:

(A) First or second degree murder;

(B) Aggravated kidnapping or especially aggravated kidnapping;

(C) Aggravated assault;

(D) Aggravated child abuse;

(E) Robbery, aggravated robbery or especially aggravated robbery;

(F) Aggravated burglary or especially aggravated burglary;

(G) Carjacking;

(H) Sexual battery, sexual battery by an authority figure or aggravated sexual battery;

(I) Statutory rape by an authority figure or aggravated statutory rape;

(J) Rape, aggravated rape, rape of a child or aggravated rape of a child;

(K) Aggravated arson;

(L) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (e)(3);

(M) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (e)(3);

(N) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (e)(3);

(O) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (e)(3);

(P) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (e)(3);

(Q) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (e)(3);

(R) Aggravated vehicular homicide;

(S) Criminally negligent homicide;

(T) Reckless homicide;

(U) Vehicular homicide; or

(V) Voluntary manslaughter.

40-35-501. Release eligibility status — Calculations.

(a)

(1) A felony sentence to the department of correction or to a local jail or workhouse shall be served according to this chapter. An inmate shall not be eligible for parole until reaching the inmate's release eligibility date; provided, that nothing in this section shall be construed as prohibiting the offender, in the discretion of the commissioner or sheriff, from participating in work crews that are under direct guard supervision.

(2) Except for inmates who receive sentences of imprisonment for life without possibility of parole, only inmates with felony sentences of more than two (2) years or consecutive felony sentences equaling a term greater than two (2) years shall be eligible for parole consideration.

(3) Notwithstanding any other law, inmates with felony sentences of two (2) years or less shall have the remainder of their original sentence suspended upon reaching their release eligibility date. The release shall not occur for sentences of two (2) years or less when the sentences are part of a consecutive sentence whose term is greater than two (2) years. The department of correction shall notify the district attorney general and the appropriate sheriff, jail administrator, workhouse superintendent or warden of the release eligibility date of all felons with sentences of two (2) years or less in the institution.

(4) No inmate shall be released under this section until at least ten (10) days after receipt of all sentencing documents by the department and ten (10) days after the department has sent notice of the release eligibility dates to the district attorney general and the appropriate sheriff, jail administrator, workhouse superintendent or warden.

(5) Suspension of sentence in this manner shall be to probation supervision under terms and conditions established by the department.

(6)

(A) The district attorney general or the appropriate sheriff, jail administrator, workhouse superintendent or warden acting through the district attorney general may file a petition with the sentencing court requesting denial of suspension of sentence based on disciplinary violations during time served in the institution. The district attorney general may file a petition with the sentencing court requesting denial of suspension of sentence based on the offender's threat to public safety as indicated by a pattern of prior violent or drug-related criminal behavior evidenced by convictions for at least two (2) crimes against the person or two (2) drug offenses under § 39-17-417. The district attorney general shall promptly send a copy of any petition filed under this subsection (a) to the appropriate sheriff, jail administrator, workhouse superintendent, warden and defense attorney.

(B) The court may deny suspension for the remainder of the sentence or any portion of the sentence after a hearing to determine the merits of the petition. The hearing shall be held within twenty (20) days of filing or the petition is deemed to be denied and may be continued by the court for reasonable cause. The inmate may petition the court for review of the denial of probation after sixty (60) days have elapsed since a hearing denying release under this subsection (a). There shall be no appeal from a court order or judgment under this subsection (a). Upon denial of suspension of sentence the clerk of the court shall promptly notify the department.

(7)

(A) For those individuals placed on probation pursuant to subdivision (a)(3), the court is authorized to revoke probation pursuant to the revocation proceedings of § 40-35-311. If the sentencing court revokes probation, the sentencing court may cause the defendant to commence the execution of the judgment as originally entered, less any credit for time served, plus any sentence credits earned and retained by the inmate. Any defendant who has been placed on probation pursuant to subdivision (a)(3), and whose probation is subsequently revoked on the same sentence, is no longer eligible for release on probation pursuant to subdivision (a)(3). However, a defendant who is placed on probation pursuant to § 40-35-303, § 40-35-306, or § 40-35-307, and whose probation is revoked pursuant to § 40-35-311, shall not be ineligible for release on that sentence pursuant to subdivision (a)(3).

(B) Nothing in subdivision (a)(7)(A) prohibits the sentencing court from:

(i) Suspending the original sentence at any time prior to its expiration, notwithstanding whether the offender is incarcerated in a local jail or a prison; or

(ii) Resentencing the defendant for the remainder of the unexpired sentence to any community-based alternative to incarceration authorized by chapter 36 of this title; provided, that the violation of probation is a technical one and does not involve the commission of a new offense.

(b) Release eligibility for each defendant sentenced as an especially mitigated offender shall occur after service of either twenty percent (20%) or thirty percent (30%) of the actual sentence imposed, less sentence credits earned and retained by the defendant. The percentage of service shall be stated on the judgment order. If the order is silent, release eligibility shall occur after service of twenty percent (20%) of the actual sentence imposed.

(c) Release eligibility for each defendant sentenced as a Range I standard offender shall occur after service of thirty percent (30%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(d) Release eligibility for each defendant sentenced as a Range II multiple offender shall occur after service of thirty-five percent (35%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(e) Release eligibility for each defendant sentenced as a Range III persistent offender shall occur after service of forty-five percent (45%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(f) Release eligibility for each defendant sentenced as a career offender shall occur after service of sixty percent (60%) of the actual sentence imposed less sentence credits earned and retained by the defendant.

(g) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life without parole as a repeat violent offender.

(h)

(1) Release eligibility for each defendant receiving a sentence of imprisonment for life for first degree murder shall occur after service of sixty percent (60%) of sixty (60) years less sentence credits earned and retained by the defendant, but in no event shall a defendant sentenced to imprisonment for life be eligible for parole until the defendant has served a minimum of twenty-five (25) full calendar years of the sentence, notwithstanding the governor's power to reduce prison overcrowding pursuant to title 41, chapter 1, part 5, any sentence reduction credits authorized by § 41-21-236 or any other provision of law relating to sentence credits. A defendant receiving a sentence of imprisonment for life for first degree murder shall be entitled to earn and retain sentence credits, but the credits shall not operate to make the defendant eligible for release prior to the service of twenty-five (25) full calendar years.

(2) There shall be no release eligibility for a defendant receiving a sentence of imprisonment for life without possibility of parole for first degree murder or aggravated rape of a child.

(i)

(1) There shall be no release eligibility for a person committing an offense, on or after July 1, 1995, that is enumerated in subdivision (i)(2). The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(2) The offenses to which subdivision (i)(1) applies are:

(A) Murder in the first degree;

(B) Murder in the second degree;

(C) Especially aggravated kidnapping;

(D) Aggravated kidnapping;

(E) Especially aggravated robbery;

(F) Aggravated rape;

(G) Rape;

(H) Aggravated sexual battery;

(I) Rape of a child;

(J) Aggravated arson;

(K) Aggravated child abuse;

(L) [Deleted by 2019 amendment.]

(M) Sexual exploitation of a minor involving more than one hundred (100) images;

(N) Aggravated sexual exploitation of a minor involving more than twenty-five (25) images; or

(O) Especially aggravated sexual exploitation of a minor.

(3) Nothing in this subsection (i) shall be construed as affecting, amending or altering § 39-13-523, which requires child sexual predators, aggravated rapists, child rapists and multiple rapists to serve the entire sentence imposed by the court undiminished by any sentence reduction credits.

(j) There shall be no release eligibility for a person committing a violation of § 39-17-1324(a) or (b) on or after January 1, 2008, until the person has served one hundred percent (100%) of the minimum mandatory sentence established in § 39-17-1324(g) or (h) and imposed by the court less sentence credits earned and retained; however, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%).

(k)

(1) There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402(a)(1), on or after July 1, 2010, until the person has served eighty-five percent (85%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2) There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402, on or after January 1, 2008, if the person has at least one (1) prior conviction for aggravated robbery, as defined in § 39-13-402, or especially aggravated robbery, as defined in § 39-13-403. The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained; however, no sentence reduction credits authorized by § 41-21-236 or any other provision of law shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%)

(3)

(A) "Prior conviction" means, for purposes of this section, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of an aggravated robbery or especially aggravated robbery prior to or at the time of committing an aggravated robbery on or after January 1, 2008.

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute the offense of aggravated robbery. If an offense involving a robbery accomplished by use of a firearm in a jurisdiction other than this state is not identified as aggravated robbery or especially aggravated robbery in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for aggravated robbery or especially aggravated robbery.

(4) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). An aggravated robbery shall be considered as having been committed after a separate period of incarceration or supervision if the aggravated robbery is committed while the person was:

(A) On probation, parole or community correction supervision for an aggravated robbery or especially aggravated robbery;

(B) Incarcerated for an aggravated robbery or especially aggravated robbery;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for an aggravated robbery or especially aggravated robbery; or

(D) On escape status from any correctional institution when incarcerated for an aggravated robbery or especially aggravated robbery.

(5) There shall be no release eligibility for a person committing attempted first degree murder as defined in § 39-13-202 where the victim suffers serious bodily injury as defined in § 39-11-106, on or after July 1, 2013, until the person has served eighty-five percent (85%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy-five percent (75%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(6)

(A) There shall be no release eligibility for a person committing aggravated child neglect or endangerment as defined in § 39-15-402, on or after July 1, 2013, and before July 1, 2014, until the person has served seventy percent (70%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below fifty-five percent (55%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(B) There shall be no release eligibility for a person committing aggravated child neglect or endangerment as defined in § 39-15-402, on or after July 1, 2014, until the person has served eighty-five percent (85%) of the sentence imposed by the court, less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(7) There shall be no release eligibility for a person committing aggravated assault as defined in § 39-13-102, that results in death of another, on or after July 1, 2013, until the person has served seventy-five percent (75%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below sixty percent (60%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(8)

(A) There shall be no release eligibility for a person committing aggravated vehicular homicide, as defined in § 39-13-218(a), on or after July 1, 2015, until the person has served sixty percent (60%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other law, shall operate to reduce below forty-five percent (45%) the percentage of sentence such person must serve before becoming release eligible.

(B) For purposes of determining if conduct occurring on or after July 1, 2015, constitutes a violation of § 39-13-218, and if that violation is governed by this subdivision (k)(8), prior convictions for predicate offenses required by § 39-13-218 may be used regardless of when they occurred.

(l)

(1) There shall be no release eligibility for a person committing continuous sexual abuse of a child as defined in § 39-13-518 on or after July 1, 2014, until the person has served the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Such person shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(2) In addition to the punishment authorized by this section, a person sentenced under § 39-13-518 shall, upon release, receive a sentence of community supervision for life pursuant to § 39-13-524.

(m) The release eligibility date provided for in this section is separately calculated for each offense for which a defendant is convicted. For consecutive sentences, the periods of ineligibility for release are calculated for each sentence and are added together to determine the release eligibility date for the consecutive sentences.

(n) The release eligibility date provided for in this section is the earliest date an inmate convicted of a felony is eligible for parole. The date is conditioned on the inmate's good behavior while in prison. For a violation of any of the rules of the department of correction or institution in which the inmate is incarcerated or while on any release program other than parole, the commissioner or the commissioner's designees may defer the release eligibility date so as to increase the total amount of time an inmate must serve before becoming eligible for parole. This increase may, in the discretion of the commissioner, be in any amount of time not to exceed the full sentence originally imposed by the court and shall be imposed pursuant to regulations promulgated by the commissioner that give notice of the length of discretionary increases that may be imposed for a violation of each of the rules of the department or institution.

(o)

(1) The department of correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the department of correction would otherwise have certified the inmate as eligible, the inmate is classified as "close custody". The decertification shall continue for the duration of the classification and for a period of one (1) year thereafter.

(2) The department of correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the department of correction would otherwise have certified the inmate as eligible, the inmate is classified as "maximum custody". The decertification shall continue for the duration of the classification and for a period of two (2) years thereafter.

(p) Extensions in the release eligibility date provided for in this section and in other sections of this chapter shall only be imposed following a hearing conducted in accordance with due process of law.

(q) Notwithstanding any other provision of this chapter relating to release eligibility and when acting pursuant to the Tennessee Contract Sentencing Act of 1979, compiled in chapter 34 of this title, the board of parole is authorized to grant a prisoner parole as specified in a sentence agreement entered into by the prisoner and the board. In granting the parole, the board may impose any conditions and limitations that the board deems necessary.

(r) Notwithstanding any other law to the contrary, the department is responsible for calculating the sentence expiration date and the release eligibility date of any felony offender sentenced to the department and any felony offender sentenced to confinement in a local jail or workhouse for one (1) or more years.

(s) To assist the department in fulfilling the duty specified in subsection (p), the clerk of the court shall send a copy of each judgment document for a felony conviction to the department. These copies shall be forwarded to the department no less than one (1) time each month so that all judgments rendered in one (1) calendar month have been received by the department by the fifteenth day of the following month.

(t) There shall be no release eligibility for a person committing the offense of carjacking under § 39-13-404, on or after July 1, 2016, until such person has served seventy-five percent (75%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(u)

(1) For the offenses listed in subdivision (u)(2) committed on or after January 1, 2017, there shall be no release eligibility until the person has served eighty-five percent (85%) of the sentence imposed by the court, less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other law, shall operate to reduce below

seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2) The offenses to which this subsection (u) is applicable are:

(A) The manufacture, delivery, or sale of a controlled substance, pursuant to § 39-17-417, where the instant offense is classified as a Class A, B, or C felony and the person has two (2) or more prior convictions for the manufacture, delivery, or sale of a controlled substance classified as a Class A, B, or C felony, pursuant to § 39-17-417, prior to or at the time of committing the instant offense; and

(B) Aggravated burglary, pursuant to § 39-14-403, or especially aggravated burglary, pursuant to § 39-14-404, if the person has two (2) or more prior convictions for either aggravated burglary, pursuant to § 39-14-403, especially aggravated burglary, pursuant to § 39-14-404, or a combination of the two (2) offenses prior to or at the time of committing the instant offense.

(3) For purposes of this subsection (u):

(A)

(i) "Prior conviction" means, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B);

(ii) "Prior conviction" includes convictions under the laws of any other state, government, or country that, if committed in this state, would constitute the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B). If a relevant offense in a jurisdiction other than this state is not identified as the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B) in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements in this state; and

(B) "Separate period of incarceration or supervision" includes a sentence to any of the sentence alternatives set out in § 40-35-104(c)(3)-(9). The applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B) shall be considered as having been committed after a separate period of incarceration or supervision if it is committed while the person was:

(i) On probation, parole, community correction supervision, or supervised release for the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B);

(ii) Incarcerated for the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B);

(iii) Assigned to a program where the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, education release, restitution release, or medical furlough for the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B); or

(iv) On escape status from any correctional institution when incarcerated for the applicable offense listed in subdivision (u)(2)(A) or (u)(2)(B).

(4) For purposes of this subsection (u), a prior conviction shall not be considered if ten (10) or more years have elapsed between the date of the instant conviction and the date of any immediately preceding conviction for the relevant offense. If, however, the date of a prior conviction is within ten (10) years of the date of the instant conviction, and the instant conviction is for an offense that occurs on or after January 1, 2017, then every conviction for such offense occurring within ten (10) years of the date of the immediately preceding conviction shall be considered in determining the number of prior offenses. However, in no event shall a conviction occurring more than twenty (20) years from the date of the instant conviction be considered a prior offense for the purposes of this subsection (u).

(v) There shall be no release eligibility for a person committing the offense of driving under the influence, as defined in § 55-10-401, on or after January 1, 2019, if the person has at least six (6) prior convictions for driving under the influence, as determined under § 55-10-405. The person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained; however, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

(w) Notwithstanding this section, a defendant sentenced under this chapter shall be authorized to earn and retain any sentence reduction credits authorized by § 41-21-236 or any other provision of law relating to sentence reduction credits. However, no sentence reduction credits earned or retained by a defendant sentenced for committing a Class A, B, or C felony against a person under title 39, chapter 13, shall operate to permit the defendant's release on parole, probation, or community correction supervision until the defendant has served the applicable percentage of the actual sentence imposed, as specified in subsections (b)-(f) and without consideration of sentence credits earned and retained by the defendant. Any sentence reduction credits earned and retained during that time shall be credited towards the defendant's expiration of sentence.

40-38-103. Rights of crime victims — Generally.

(a) All victims of crime shall, upon their request, have the right to:

(1) Be fully informed orally, in writing or by video tape by the office of the district attorney general, acting through the appropriate victim-witness coordinator, of the following:

(A) The various steps and procedures involved in the criminal justice system;

(B) The procedure and basis for continuances in the proceedings;

(C) The procedure involved in the plea-bargaining process and how to request input into the process;

(D) The times, dates and locations of all pertinent stages in the proceedings following presentment or indictment by the grand jury;

(E) The methods by which the victim may have input into a convicted defendant's sentence, including the presentence report and the sentencing hearing;

(F) The stages in the appellate process and how to obtain information concerning appellate action that has an effect on the defendant's conviction or sentence and the date a defendant's sentence becomes final;

(G) How to obtain pertinent information relating to the possible release of an appropriate inmate, including notification of any department of correction decision permitting the inmate's release into the community or any scheduled hearing by the board of parole concerning the inmate's parole or application for executive clemency;

(H) The methods by which the victim may obtain restitution directly from the defendant and information about obtaining assistance in obtaining restitution; and

(I) The methods by which the victim may obtain a monetary award or other benefits from the criminal injuries compensation fund and information about obtaining assistance in securing the award or benefits;

(2) Whenever possible, be advised and informed of plea bargaining discussions and agreements prior to the entry of any plea agreement where the victim is a victim of violent crime involving death of a family member or serious bodily injury, speak at parole hearings, submit a victim impact statement to the courts and the board of parole and give impact testimony at court sentencing hearings;

(3) Be informed that § 41-21-240 requires the department to notify them, upon their request, at least ninety (90) days prior to the date an inmate with a sentence of two (2) years or more is scheduled to be released by reason of expiration of the inmate's sentence and be informed how the request of the department is made; and

(4) Be compensated for expenses actually and reasonably incurred as the result of traveling to and from the trial of the defendant or defendants and traveling to and from appellate, postconviction or habeas corpus proceedings resulting from the trial of the defendant or defendants alleged to have committed a compensable offense subject to title 29, chapter 13, part 1, and the availability of funds in the criminal injuries compensation fund.

(b) Upon the request of a victim of violent crime involving serious bodily injury or death of a relative, the victim shall be supplied information and a request form by the law enforcement agency responsible for the investigation of the crime or the arrest of the defendant, the sheriff or other custodian of the defendant, or the victim-witness coordinator as to how the victim or relative of a victim may request and secure notification of the release from custody of an offender from a jail or detention facility prior to trial.

The jailer, sheriff, or other custodian of criminal offenders shall maintain a physical or electronic record or file of the victim's request for notification and, prior to the release of an offender about whom a notification request has been made, give immediate and prompt notice of the release to the requesting victim or family member of a victim by the most direct means available, including telephone, messenger, or telegram; provided, that if the victim or family member of a victim is registered with the state's electronic victim notification system, the notice required by this section shall be communicated by the method or methods indicated by the registration in the system. Any identifying information contained in the request forms shall be confidential. For purposes of this subsection (b), "identifying information" means the name, home and work addresses, telephone numbers, email address, and social security number of the person being notified or requesting that notification be provided.

(c) In a prosecution for any criminal homicide, an appropriate photograph of the victim while alive shall be admissible evidence when offered by the district attorney general to show the general appearance and condition of the victim while alive.

67-4-602. Tax imposed.

(a) There is levied a privilege tax on litigation instituted in this state, of twenty-nine dollars and fifty cents ($29.50) on all criminal charges, upon conviction or by order.

(b) There is levied a privilege tax on litigation of twenty-three dollars and seventy-five cents ($23.75) in all civil cases in this state in chancery court, circuit court, probate court, general sessions court when exercising state court jurisdiction, or in any other court exercising state court jurisdiction in a civil case in this state other than the court of appeals or the supreme court. When a general sessions court is exercising state court jurisdiction, except with regard to cases in juvenile court, there is levied an additional privilege tax of one dollar ($1.00).

(c) There is levied a privilege tax on litigation of seventeen dollars and seventy-five cents ($17.75) in all civil cases in this state in general sessions court, when not exercising state court jurisdiction.

(d) There is levied a privilege tax on litigation of thirteen dollars and seventy-five cents ($13.75) in all civil cases in this state in the court of appeals or the supreme court.

(e) In all civil cases in municipal courts in this state, the clerk of the court shall collect a litigation tax in accordance with § 16-18-305. When a municipal court is exercising general sessions jurisdiction, the clerk of the court shall collect a privilege tax on litigation in those cases that is the same as the tax collected by other general sessions courts in comparable cases.

(f)

(1) In addition to any other tax imposed by this chapter, there is levied a privilege tax on litigation of three dollars ($3.00) on all criminal charges, upon conviction or by order, instituted in the general sessions court in any county having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625), nor more than three hundred nineteen thousand seven hundred twenty-five (319,725), according to the 1980 federal census or any subsequent federal census. Notwithstanding the apportionment provisions of § 67-4-606, each levy of this tax shall be paid into the office of the county clerk of such county, with the proceeds to be credited to a separate reserve account in the county fund. The proceeds shall be disbursed to expand the use of the appropriate law enforcement officers for walking patrols within public housing subdivisions, and in localities within such county that traditionally experience greater incidence of crime. The proceeds may also be used by the respective police department to fund police cadet programs conducted by such department, in localities within such county that traditionally experience greater incidence of crime.

(2) Five percent (5%) of the proceeds collected under subdivision (f)(1) shall be retained by the office of the county clerk collecting the tax, for the purpose of effectuating this subsection (f).

(g)

(1) In addition to any other tax levied by this chapter, there is levied an additional privilege tax on litigation of one dollar ($1.00) on all criminal charges, upon conviction or by order, instituted in any state or county court, for any violation of title 55, chapter 8, or for a violation of any ordinance governing use of public parking space.

(2) Notwithstanding the provisions of this chapter or any private act or resolution of a county legislative body to the contrary, no litigation taxes shall apply to any charge prosecuted for an offense under § 55-8-188.

(h)

(1) There is imposed an additional privilege tax on litigation of one dollar ($1.00) on all criminal charges, upon conviction or by order, instituted in any state or general sessions court. Effective July 1, 2012, the privilege tax on litigation imposed by this subdivision (h)(1) is increased in the amount of two dollars ($2.00), for a total of three dollars ($3.00), which shall be deposited to the statewide automated victim information and notification system fund created by subdivision (h)(2).

(2)

(A) There is created a special account in the state treasury to be known as the statewide automated victim information and notification system fund, referred to as the victim notification fund in this section.

(B) Notwithstanding the apportionment of revenue formula in § 67-4-606, proceeds from the privilege tax on litigation imposed by subdivision (h)(1) must be deposited in the victim notification fund.

(3) Moneys in the victim notification fund may be invested by the state treasurer in accordance with § 9-4-603.

(4) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the victim notification fund shall be credited to the fund, shall not revert to the general fund and shall be carried forward into the subsequent fiscal year.

(5) Any balance remaining unexpended at the end of a fiscal year in the victim notification fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(6) Money in the victim notification fund may be expended only in accordance with annual appropriations approved by the general assembly and in accordance with § 40-38-505.

(i) The privilege taxes imposed by § 40-24-107 are deemed litigation taxes, collectible by the respective court clerks as otherwise provided in § 67-4-603, and subject to apportionment according to § 67-4-606; however, the designation of these taxes as litigation taxes shall not change the clerk's fee provided for in § 40-24-107, nor shall the designation of the taxes as litigation taxes alter the priority of collection or distribution of monies collected by the clerk in cases where these taxes are levied.

(j) The privilege tax imposed by § 39-13-708, after deduction for administrative costs under § 39-13-708(c)(1), is deemed a litigation tax, collectible by the respective court clerks, as otherwise provided in § 67-4-603, and subject to apportionment according to § 67-4-606; however, the designation of these taxes as litigation taxes shall not change the clerk's fee provided for in § 39-13-708(c)(1), nor shall the designation of the taxes as litigation taxes alter the priority of collection or distribution of monies collected by the clerk in cases where these taxes are levied.

(k)

(1) In addition to any other tax imposed by this chapter, there is levied a privilege tax on litigation of two dollars ($2.00) on all criminal charges, upon conviction or by order, instituted in the general sessions court of any county served by a judicial commissioner.

(2)

(A) There is created a special account in the state treasury to be known as the judicial commissioner continuing education account, referred to as the judicial commissioner fund in this subsection (k).

(B) Notwithstanding the apportionment of revenue formula in § 67-4-606, there shall be deposited in the judicial commissioner fund proceeds from the two-dollar privilege tax on litigation imposed by subdivision (k)(1).

(3) Moneys in the judicial commissioner fund may be invested by the state treasurer in accordance with § 9-4-603.

(4) Notwithstanding any law to the contrary, interest accruing on investments and deposits of the judicial commissioner fund shall be credited to the fund, shall not revert to the general fund and shall be carried forward into the subsequent fiscal year.

(5) Any balance remaining unexpended at the end of a fiscal year in the judicial commissioner fund shall not revert to the general fund but shall be carried forward into the subsequent fiscal year.

(6) Moneys in the judicial commissioner fund may be expended only in accordance with annual appropriations approved by the general assembly for the purposes described in § 40-1-111(f)(7).

(l) Every person from whom the clerks of the various courts are required to collect the tax imposed by this section shall be liable for the tax imposed by this section.

(m) [Deleted by 2016 amendment.]

V. Confidential Records.

10-7-504. Confidential records — Exceptions.

(a)

(1)

(A) The medical records of patients in state, county, and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county, or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public. Individually identifiable health information collected, created, or prepared by the department of health shall be treated as confidential and shall not be open for inspection by members of the public; provided, however, that the department may disclose such information as authorized or required by law.

(B) As used in this subdivision (a)(1), "individually identifiable health information" means information related to the physical or mental health of an individual and that explicitly or by implication identifies the individual who is the subject of the information, including by name, address, birth date, death date, admission or discharge date, telephone number, facsimile number, electronic mail address, social security number, medical record number, health plan beneficiary number, account number, certificate or license number, biometric identifier, or any other identifying number, characteristic, or code.

(2)

(A) All investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, all criminal investigative fil Recles and records of the Tennessee alcoholic beverage commission, and all files of the handgun carry permit and driver license issuance divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; provided, however, that such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house, or if such inspection is directed by a majority vote of the entire membership of an ad hoc committee appointed specifically to study unsolved civil rights crimes that occurred between 1938 and 1975 and that is composed only of elected members of the general assembly. Any record inspected pursuant to this exception shall maintain its confidentiality throughout the inspection. Records shall not be available to any member of the executive branch except to the governor and to those directly involved in the investigation in the specified agencies.

(B) The records of the departments of agriculture and environment and conservation and the Tennessee alcoholic beverage commission referenced in subdivision (a)(2)(A) shall cease to be confidential when the investigation is closed by the department or commission or when the court in which a criminal prosecution is brought has entered an order concluding all proceedings and the opportunity for direct appeal has been exhausted; provided, however, that any identifying information about a confidential informant or undercover law enforcement agent shall remain confidential.

(C) The Tennessee bureau of investigation, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4)

(A) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto, and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(B) Notwithstanding subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), an institution of post-secondary education shall disclose to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(C) Notwithstanding subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of post-secondary education shall disclose the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, as that term is defined in 18 U.S.C. § 16, or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(D) For the purpose of this section, the final results of any disciplinary proceeding:

(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student;

(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student; and

(iii) Shall only apply to disciplinary hearings in which the final results were reached on or after October 7, 1998.

(E) Notwithstanding subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution under former § 40-39-106 [repealed], concerning registered sex offenders who are required to register under former § 40-39-103 [repealed].

(F) Notwithstanding subdivision (a)(4)(A) to the contrary, unless otherwise prohibited by FERPA, an institution of higher education shall disclose to a parent or legal guardian of a student information regarding any violation of any federal, state, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol, a controlled substance or a controlled substance analogue, regardless of whether that information is contained in the student's education records, if:

(i) The student is under twenty-one (21) years of age;

(ii) The institution determines that the student has committed a disciplinary violation with respect to such use or possession; and

(iii) The final determination that the student committed such a disciplinary violation was reached on or after October 7, 1998.

(G) Notwithstanding subdivision (a)(4)(A), § 37-5-107 or § 37-1-612, the institution shall release records to the parent or guardian of a victim or alleged victim of child abuse or child sexual abuse pursuant to § 37-1-403(i)(3) or § 37-1-605(d)(2). Any person or entity that is provided access to records under this subdivision (a)(4)(G) shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(5)

(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection (a) which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision (a)(5) shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of children's services shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. An employee of the department of correction shall also be allowed to inspect such investigative records of the internal affairs division of the department of correction, or relevant portion thereof, prior to a due process hearing at which disciplinary action is considered or issued unless the commissioner of correction specifically denies in writing the employee's request to examine such records prior to the hearing. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9)

(A) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(B) Any data or records provided to or collected by the department of agriculture pursuant to the implementation and operation of premise identification or animal tracking programs shall be considered confidential and shall not be open for inspection by members of the public. Likewise, all contingency plans prepared concerning the department's response to agriculture-related homeland security events shall be considered confidential and shall not be open for inspection by members of the public. The department may disclose data or contingency plans to aid the law enforcement process or to protect human or animal health.

(C) Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

(10)

(A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information;

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(11) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records shall be treated as confidential and shall not be open for inspection by members of the public. This exemption shall not apply to any records prepared or received in the course of the operation of state or local governments.

(12) Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with title 55, chapter 25.

(13)

(A) All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege. In order for such privilege to apply, the incident counseling and/or therapy shall be conducted by a qualified mental health professional as defined in § 33-1-101.

(B) For the purposes of this section, "group setting" means that more than one (1) person is present with the mental health professional when the incident counseling and/or therapy is being conducted.

(C) All memoranda, work notes or products, case files and communications pursuant to this section shall not be construed to be public records pursuant to this chapter.

(D) Nothing in this section shall be construed as limiting a licensed professional's obligation to report suspected child abuse or limiting such professional's duty to warn about dangerous individuals as provided under §§ 33-3-206 — 33-3-209, or other provisions relevant to the mental health professional's license.

(E) Nothing in this section shall be construed as limiting the ability of a patient or client, or such person's survivor, to discover under the Rules of Civil Procedure or to admit in evidence under the Rules of Evidence any memoranda, work notes or products, case files and communications which are privileged by this section and which are relevant to a health care liability action or any other action by a patient against a mental health professional arising out of the professional relationship. In such an action against a mental health professional, neither shall anything in this section be construed as limiting the ability of the mental health professional to so discover or admit in evidence such memoranda, work notes or products, case files and communications.

(14) All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract shall be treated as confidential and shall not be open for inspection by members of the public.

(15)

(A) As used in this subdivision (a)(15), unless the context otherwise requires:

(i) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(ii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center, domestic violence shelter, or human trafficking service provider, as defined in § 36-3-623, certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers, shelters, and providers by the Tennessee task force against domestic violence; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electricity, natural gas, water, or telephone service to customers on a subscription basis, whether or not regulated by the Tennessee public utility commission.

(B) If the procedure set out in this subdivision (a)(15) is followed, identifying information compiled and maintained by a utility service provider concerning a person who has obtained a valid protection document shall be treated as confidential and not open for inspection by the public.

(C) For subdivision (a)(15)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the utility service provider whose records such

person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the records custodian shall accept receipt of it and maintain it in a separate file containing in alphabetical order all protection documents presented to such records custodian pursuant to this subdivision (a)(15). Nothing in this subdivision (a)(15) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents provided the records custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(15) shall remain confidential until the person who requested such confidentiality notifies in person the records custodian of the appropriate utility service provider that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(15)(E), and the identifying information about such person shall be treated in the same manner as the identifying information concerning any other customer of the utility. Before removing the protection document and releasing any identifying information, the records custodian of the utility service provider shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such custodian that that person is the same person as the person to whom the document was originally granted.

(G) After July 1, 1999, if information is requested from a utility service provider about a person other than the requestor and such request is for information that is in whole or in part identifying information, the records custodian of the utility service provider shall check the separate file containing all protection documents that have been presented to such utility. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(15), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(15) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise would be held confidential under this subdivision (a)(15).

(16)

(A) As used in this subdivision (a)(16), unless the context otherwise requires:

(i) "Governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate the whereabouts of an individual;

(iii) "Protection document" means:

(a) An order of protection issued pursuant to title 36, chapter 3, part 6, that has been granted after proper notice and an opportunity to be heard;

(b) A similar order of protection issued by the court of another jurisdiction;

(c) An extension of an ex parte order of protection granted pursuant to § 36-3-605(a);

(d) A similar extension of an ex parte order of protection granted by a court of competent jurisdiction in another jurisdiction;

(e) A restraining order issued by a court of competent jurisdiction prohibiting violence against the person to whom it is issued;

(f) A court order protecting the confidentiality of certain information issued upon the request of a district attorney general to a victim or witness in a criminal case, whether pending or completed; and

(g) An affidavit from the director of a rape crisis center or domestic violence shelter certifying that an individual is a victim in need of protection; provided, that such affidavit is on a standardized form to be developed and distributed to such centers and shelters by the Tennessee task force against domestic violence.

(B) If the procedure set out in this subdivision (a)(16) is followed, identifying information compiled and maintained by a governmental entity concerning a person who has obtained a valid protection document may be treated as confidential and may not be open for inspection by the public.

(C) For subdivision (a)(16)(B) to be applicable, a copy of the protection document must be presented during regular business hours by the person to whom it was granted to the records custodian of the governmental entity whose records such person seeks to make confidential, and such person must request that all identifying information about such person be maintained as confidential.

(D) The protection document presented must at the time of presentation be in full force and effect. The records custodian may assume that a protection document is in full force and effect if it is on the proper form and if on its face it has not expired.

(E) Upon being presented with a valid protection document, the record custodian may accept receipt of it. If the records custodian does not accept receipt of such document, the records custodian shall explain to the person presenting the document why receipt cannot be accepted and that the identifying information concerning such person will not be maintained as confidential. If the records custodian does accept receipt of the protection document, such records custodian shall maintain it in a separate file containing in alphabetical order all protection documents presented to such custodian pursuant to this subdivision (a)(16). Nothing in this subdivision (a)(16) shall be construed as prohibiting a records custodian from maintaining an electronic file of such protection documents; provided, that the custodian retains the original document presented.

(F) Identifying information concerning a person that is maintained as confidential pursuant to this subdivision (a)(16) shall remain confidential until the person requesting such confidentiality notifies in person the appropriate records custodian of the governmental entity that there is no longer a need for such information to remain confidential. A records custodian receiving such notification shall remove the protection document concerning such person from the file maintained pursuant to subdivision (a)(16)(E), and the identifying information about such person shall be treated in the same manner as identifying information maintained by the governmental entity about other persons. Before removing the protection document and releasing any identifying information, the records custodian of the governmental entity shall require that the person requesting release of the identifying information maintained as confidential produce sufficient identification to satisfy such records custodian that that person is the same person as the person to whom the document was originally granted.

(G)

(i) After July 1, 1999, if:

(a) Information is requested from a governmental entity about a person other than the person making the request;

(b) Such request is for information that is in whole or in part identifying information; and

(c) The records custodian of the governmental entity to whom the request was made accepts receipt of protection documents and maintains identifying information as confidential;

(ii) then such records custodian shall check the separate file containing all protection documents that have been presented to such entity. If the person about whom information is being requested has presented a valid protection document to the records custodian in accordance with the procedure set out in this subdivision (a)(16), and has requested that identifying information about such person be maintained as confidential, the records custodian shall redact or refuse to disclose to the requestor any identifying information about such person.

(H) Nothing in this subdivision (a)(16) shall prevent the district attorney general and counsel for the defendant from providing to each other in a pending criminal case, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subdivision (a)(16).

(I) In an order of protection case, any document required for filing, other than the forms promulgated by the supreme court pursuant to § 36-3-604(b), shall be treated as confidential and kept under seal except that the clerk may transmit any such document to the Tennessee bureau of investigation, 911 service or emergency response agency or other law enforcement agency.

(17) The telephone number, address, and any other information which could be used to locate the whereabouts of a domestic violence shelter, family safety center, rape crisis center, or human trafficking service provider, as defined in § 36-3-623, may be treated as confidential by a governmental entity, and shall be treated as confidential by a utility service provider, as defined in subdivision (a)(15), upon the director of the shelter, family safety center, crisis center, or human trafficking service provider giving written notice to the records custodian of the appropriate entity or utility that such shelter, family safety center, crisis center, or human trafficking service provider desires that such identifying information be maintained as confidential. The records of family safety centers shall be treated as confidential in the same manner as the records of domestic violence shelters pursuant to § 36-3-623.

(18) Computer programs, software, software manuals, and other types of information manufactured or marketed by persons or entities under legal right and sold, licensed, or donated to Tennessee state boards, agencies, political subdivisions, or higher education institutions shall not be open to public inspection; provided, that computer programs, software, software manuals, and other types of information produced by state or higher education employees at state expense shall be available for inspection as part of an audit or legislative review process.

(19) Credit card account numbers and any related personal identification numbers (PIN) or authorization codes in the possession of the state or a political subdivision thereof shall be maintained as confidential and shall not be open for inspection by members of the public.

(20)

(A) For the purposes of this subdivision (a)(20), the following terms shall have the following meaning:

(i) "Consumer" means any person, partnership, limited partnership, corporation, professional corporation, limited liability company, trust, or any other entity, or any user of a utility service;

(ii) "Municipal" and "municipality" means a county, metropolitan government, incorporated city, town of the state, or utility district as created in title 7, chapter 82;

(iii) "Private records" means a credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, access codes, and consumer-specific energy and water usage data except for aggregate monthly billing information; and

(iv) "Utility" includes any public electric generation system, electric distribution system, water storage or processing system, water distribution system, gas storage system or facilities related thereto, gas distribution system, wastewater system, telecommunications system, or any services similar to any of the foregoing.

(B) The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.

(C) Information made confidential by this subsection (a) shall be redacted wherever possible and nothing in this subsection (a) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. For purposes of this section only, it shall be presumed that redaction of such information is possible. The entity requesting the records shall pay all reasonable costs associated with redaction of materials.

(D) Nothing in this subsection (a) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(E) Nothing in this subsection (a) shall be construed to limit access to information made confidential under this subsection (a), when the consumer expressly authorizes the release of such information.

(21)

(A) The following records shall be treated as confidential and shall not be open for public inspection:

(i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;

(ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection (a) or any other provision of this chapter has been redacted or deleted from the documents

(C) As used in this subdivision (a)(21):

(i) "Governmental entity" means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Governmental utility" means a utility service provider that is also a governmental entity; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the state of Tennessee, whether or not regulated by the Tennessee public utility commission.

(D) Nothing in this subdivision (a)(21) shall be construed to limit access to these records by other governmental agencies performing official functions or to preclude any governmental agency from allowing public access to these records in the course of performing official functions.

(22) The following records shall be treated as confidential and shall not be open for public inspection:

(A) The audit working papers of the comptroller of the treasury and state, county and local government internal audit staffs conducting audits as authorized by § 4-3-304. For purposes of this subdivision (a)(22) "audit working papers" includes, but is not limited to, auditee records, intra-agency and interagency communications, draft reports, schedules, notes, memoranda and all other records relating to an audit or investigation;

(B) All information and records received or generated by the comptroller of the treasury containing allegations of unlawful conduct or fraud, waste or abuse;

(C) All examinations administered by the comptroller of the treasury as part of the assessment certification and education program, including, but not limited to, the total bank of questions from which the tests are developed, the answers, and the answer sheets of individual test takers; and

(D) Survey records, responses, data, identifying information as defined in subdivision (a)(15), intra-agency and interagency communications, and other records received to serve as input for any survey created, obtained, or compiled by the comptroller of the treasury; provided, however, this subdivision (a)(22)(D) shall not apply to any survey conducted by the office of open records counsel, created by § 8-4-601.

(23) All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines, and criteria adopted by the state board of education under § 49-1-302 shall be treated as confidential and shall not be open to the public. Nothing in this subdivision (a)(23) shall be construed to prevent the LEA, public charter school, state board of education, or department of education from accessing and utilizing such records as required to fulfill their lawful functions. Lawful functions shall include the releasing of such records to parties conducting research in accordance with § 49-1-606(b).

(24) All proprietary information provided to the alcoholic beverage commission shall be treated as confidential and shall not be open for inspection by members of the public. As used in this subdivision (a)(24), "proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company

submitting information to the alcoholic beverage commission and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

(25) A voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for secondary schools in this state shall have access to records or information from public, charter, non-public, other schools, school officials and parents or guardians of school children as is required to fulfill its duties and functions. Records or information relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing, and personal family information in the possession of such association shall be confidential.

(26)

(A) Job performance evaluations of the following employees shall be treated as confidential and shall not be open for public inspection:

(i) Employees of the department of treasury;

(ii) Employees of the comptroller of the treasury;

(iii) Employees of the secretary of state's office; and

(iv) Employees of public institutions of higher education.

(B) For purposes of this subdivision (a)(26), "job performance evaluations" includes, but is not limited to, job performance evaluations completed by supervisors, communications concerning job performance evaluations, self-evaluations of job performance prepared by employees, job performance evaluation scores, drafts, notes, memoranda, and all other records relating to job performance evaluations.

(C) Nothing in this subdivision (a)(26) shall be construed to limit access to those records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(27) E-mail addresses collected by the department of state's division of business services, except those that may be contained on filings submitted pursuant to title 47, chapter 9, or § 55-3-126(f), shall be treated as confidential and shall not be open to inspection by members of the public.

(28) Proposals and statements of qualifications received by a local government entity in response to a personal service, professional service, or consultant service request for proposals or request for qualifications solicitation, and related records, including, but not limited to, evaluations, names of evaluation committee members, and all related memoranda or notes, shall not be open for public inspection until the intent to award the contract to a particular respondent is announced.

(29)

(A) No governmental entity shall publicly disclose personally identifying information of any citizen of the state unless:

(i) Permission is given by the citizen;

(ii) Distribution is authorized under state or federal law; or

(iii) Distribution is made:

(a) To a consumer reporting agency as defined by the federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 et seq.);

(b) To a financial institution subject to the privacy provisions of the federal Gramm Leach Bliley Act (15 U.S.C. § 6802); or

(c) To a financial institution subject to the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (31 U.S.C. §§ 5311 et seq.).

(B)

(i) This subdivision (a)(29) does not prohibit the use of personally identifying information by a governmental entity in the performance of its functions or the disclosure of personally identifying information to another governmental

entity, or an agency of the federal government, or a private person or entity that has been authorized to perform certain duties as a contractor of the governmental entity.

(ii) Any person or entity receiving personally identifying information from a governmental entity shall be subject to the same confidentiality provisions as the disclosing entity; provided, however, that the confidentiality provisions applicable to a consumer reporting agency or financial institution as defined in subdivision (a)(29)(A)(iii) shall be governed by federal law.

(C) For purposes of this subdivision (a)(29), "personally identifying information" means:

(i) Social security numbers;

(ii) Official state or government issued driver licenses or identification numbers;

(iii) Alien registration numbers or passport numbers;

(iv) Employer or taxpayer identification numbers;

(v) Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or

(vi) Unique electronic identification numbers, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

(30)

(A) Proprietary information, trade secrets, and marketing information submitted to any food-based business incubation service provider created by a municipality shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(30):

(i) "Proprietary information":

(a) Means commercial or financial information that is used either directly or indirectly in the business of any person or company submitting information to a food-based business incubation service provider, and that gives such person or company an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(b) Does not include lease agreements with the incubation service provider, the identity of businesses or persons using the incubation service provider's services, amounts paid to the incubation service provider by businesses or persons for use of facilities or for other services, or financial records of the incubation service provider;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships; and

(iii) "Trade secret" means a manufacturing process, materials used therein, and costs associated with the manufacturing process of any person or company submitting information to a food-based business incubation service provider.

(31)

(A) Except as provided in subdivisions (a)(31)(B)-(D), personally identifying information of any person named in any motor vehicle accident report is confidential and not open for public inspection.

(B) Notwithstanding subdivision (a)(31)(A) and upon written request, any person named in any motor vehicle accident report, or such person's agent, legal representative, or attorney, certifying that the person has permission from the person, persons, or entities authorized to obtain motor vehicle records information pursuant to § 55-25-107(b)(1), (b)(6) or (b)(9), is authorized to receive an accident report containing personally identifying information of persons involved in the accident.

(C) Notwithstanding subdivision (a)(31)(A), any federal, state, or local governmental agency, or any private person or entity acting on behalf of a federal, state, or local governmental agency, may use personally identifying information in carrying out the agency's functions.

(D) Nothing in this subdivision (a)(31) prevents a law enforcement entity from releasing information about traffic accidents to the public, including the name, age, and county or city of residence of a person involved in an accident, when the law enforcement entity determines such release is in the best interest of the agency and for the public good.

(E) For purposes of this subdivision (a)(31), "personally identifying information" means:

(i) Street addresses and zip codes;

(ii) Telephone numbers;

(iii) Driver license numbers; and

(iv) Insurance information.

(F) This subdivision (a)(31) is repealed June 30, 2026.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or intellectual and developmental disabilities. This section does not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years of age on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection (d), "employee assistance program" means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

(e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be treated as confidential and shall not be open for inspection by members of the public until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, part 86, or the emergency communications board created pursuant to § 7-86-302 or its designated agent shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

(f)

(1) The following records or information of any state, county, municipal or other public employee or former employee, or applicant to such position, or of any law enforcement officer commissioned pursuant to § 49-7-118, in the possession of a governmental entity or any person in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Home telephone and personal cell phone numbers;

(B) Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;

(C) Social security number;

(D)

(i) Residential information, including the street address, city, state and zip code, for any state employee; and

(ii) Residential street address for any county, municipal or other public employee;

(E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;

(F) The information listed in subdivisions (f)(1)(A)-(E) of immediate family members, whether or not the immediate family member resides with the employee, or household members;

(G) Emergency contact information, except for that information open to public inspection in accordance with subdivision (f)(1)(D)(ii); and

(H) Personal, nongovernment issued, email address.

(2) Information made confidential by this subsection (f) shall be redacted wherever possible and nothing in this subsection (f) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(3) Nothing in this subsection (f) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Nothing in this subsection (f) shall be construed to close any personnel records of public officers which are currently open under state law.

(5) Nothing in this subsection (f) shall be construed to limit access to information made confidential under this subsection (f), when the employee expressly authorizes the release of such information.

(6) Notwithstanding any provision to the contrary, the bank account information for any state, county, municipal, or other public employee, former employee or applicant to such position, or any law enforcement officer commissioned pursuant to § 49-7-118, that is received, compiled or maintained by the department of treasury, shall be confidential and not open for inspection by members of the public, regardless of whether the employee is employed by the department of treasury. The bank account information that shall be kept confidential shall include, but not be limited to bank account numbers, transit routing numbers and the name of the financial institutions.

(7) Notwithstanding any provision to the contrary, the following information that is received, compiled or maintained by the department of treasury relating to the department's investment division employees who are so designated in writing by the state treasurer shall be kept confidential and not open for inspection by members of the public: holdings reports, confirmations, transaction reports and account statements relative to securities, investments or other assets disclosed by the employee to the employer, or authorized by the employee to be released to the employer directly or otherwise.

(8)

(A) Any person required by law to treat information described in subdivision (f)(1)(D) as confidential commits an offense if such information pertains to a law enforcement officer or a county corrections officer and:

(i) The person acts with criminal negligence, as defined in § 39-11-106, in releasing the information to the public; or

(ii) The person knows the information is to be treated as confidential and intentionally releases the information to the public.

(B)

(i) A violation of subdivision (f)(8)(A)(i) is a Class B misdemeanor punishable only by a fine of five hundred dollars ($500).

(ii) A violation of subdivision (f)(8)(A)(ii) is a Class A misdemeanor.

(C) Subdivision (f)(8)(A) shall not apply if:

(i) The law enforcement officer or county corrections officer whose information is treated as confidential under subdivision (f)(1)(D) expressly authorizes the release of such information; or

(ii) The information is released pursuant to court order.

(g)

(1)

(A)

(i) All law enforcement personnel information in the possession of any entity or agency in its capacity as an employer, including officers commissioned pursuant to § 49-7-118, shall be open for inspection as provided in § 10-7-503(a), except personal information shall be redacted where there is a reason not to disclose as determined by the chief law enforcement officer or the chief law enforcement officer's designee.

(ii) When a request to inspect includes personal information and the request is for a professional, business, or official purpose, the chief law enforcement officer or custodian shall consider the specific circumstances to determine whether there is a reason not to disclose and shall release all information, except information made confidential in subsection (f), if there is not such a reason. In all other circumstances, the officer shall be notified prior to disclosure of the personal information and shall be given a reasonable opportunity to be heard and oppose the release of the information. Nothing in this subdivision (g)(1) shall be construed to limit the requestor's right to judicial review set out in § 10-7-505.

(iii) The chief law enforcement officer shall reserve the right to segregate information that could be used to identify or to locate an officer designated as working undercover.

(B) In addition to the requirements of § 10-7-503(c), the request for a professional, business, or official purpose shall include the person's business address, business telephone number and email address. The request may be made on official or business letterhead and the person making the request shall provide the name and contact number or email address for a supervisor for verification purposes.

(C) If the chief law enforcement official, the chief law enforcement official's designee, or the custodian of the information decides to withhold personal information, a specific reason shall be given to the requestor in writing within two (2) business days, and the file shall be released with the personal information redacted.

(D) For purposes of this subsection (g), personal information shall include the officer's residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled.

(2) Nothing in this subsection (g) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains some information made confidential by subdivision (g)(1).

(3) Nothing in this subsection (g) shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(4) Except as provided in subdivision (g)(1), nothing in this subsection (g) shall be construed to close personnel records of public officers, which are currently open under state law.

(5) Nothing in this subsection (g) shall be construed to limit access to information made confidential by subdivision (g)(1), when the employee expressly authorizes the release of such information.

(h)

(1) Notwithstanding any other law to the contrary, those parts of the record identifying an individual or entity as a person or entity who or that has been or may in the future be directly involved in the process of executing a sentence of death shall be treated as confidential and shall not be open to public inspection. For the purposes of this section "person or entity" includes, but is not limited to, an employee of the state who has training related to direct involvement in the process of executing a sentence of death, a contractor or employee of a contractor, a volunteer who has direct involvement in the process of executing a sentence of death, or a person or entity involved in the procurement or provision of chemicals, equipment, supplies and other items for use in carrying out a sentence of death. Records made confidential by this section include, but are not limited to, records related to remuneration to a person or entity in connection with such person's or entity's participation in or preparation for the execution of a sentence of death. Such payments shall be made in accordance with a memorandum of understanding between the commissioner of correction and the commissioner of finance and administration in a manner that will protect the public identity of the recipients; provided, that, if a contractor is employed to participate in or prepare for the execution of a sentence of death, the amount of the special payment made to such contractor pursuant to the contract shall be reported by the commissioner of correction to the comptroller of the treasury and such amount shall be a public record.

(2) Information made confidential by this subsection (h) shall be redacted wherever possible and nothing in this subsection (h) shall be used to limit or deny access to otherwise public information because a file, a document, or data file contains confidential information.

(i)

(1) Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. For the purpose of this section, "government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. For the purpose of this section, "governmental entity" means the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee. Such records include:

(A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property;

(B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

(2) Information made confidential by this subsection (i) shall be redacted wherever possible and nothing in this subsection (i) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information.

(3)

(A) Documents concerning the cost of protecting government property or electronic information shall not be confidential.

(B) The identity of a vendor that provides to the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall be confidential.

(C) The identity of a vendor that provides to a governmental entity other than the state goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information shall not be confidential; provided, that the identity of the vendor shall be confidential if the governing body of the governmental entity votes affirmatively to make such information confidential.

(D) Notwithstanding subdivisions (i)(3)(B) and (C), a governmental entity shall, upon request, provide the identity of a vendor to the comptroller of the treasury, the fiscal review committee of the general assembly, and any member of the general assembly. If the identity of the vendor is confidential under subdivision (i)(3)(B) or (i)(3)(C), the comptroller, fiscal review committee, or member shall exercise reasonable care in maintaining the confidentiality of the identity of the vendor obtained under this subdivision (i)(3)(D).

(j)

(1) Notwithstanding any other law to the contrary, identifying information compiled and maintained by the department of correction and the board of parole concerning any person shall be confidential when the person has been notified or requested that notification be provided to the person regarding the status of criminal proceedings or of a convicted felon incarcerated in a department of correction institution, county jail or workhouse or under state supervised probation or parole pursuant to § 40-28-505, § 40-38-103, § 40-38-110, § 40-38-111, § 41-21-240 or § 41-21-242.

(2) For purposes of subdivision (j)(1), "identifying information" means the name, home and work addresses, telephone numbers and social security number of the person being notified or requesting that notification be provided.

(k) The following information regarding victims who apply for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, shall be treated as confidential and shall not be open for inspection by members of the public:

(1) Residential information, including the street address, city, state and zip code;

(2) Home telephone and personal cell phone numbers;

(3) Social security number; and

(4) The criminal offense from which the victim is receiving compensation.

(l)

(1) All applications, certificates, records, reports, legal documents and petitions made or information received pursuant to title 37 that directly or indirectly identifies a child or family receiving services from the department of children's services or that identifies the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be confidential and shall not be open for public inspection, except as provided by §§ 37-1-131, 37-1-409, 37-1-612, 37-5-107 and 49-6-3051.

(2) The information made confidential pursuant to subdivision (*l*)(1) includes information contained in applications, certifications, records, reports, legal documents and petitions in the possession of not only the department of children's services but any state or local agency, including, but not limited to, law enforcement and the department of education.

(m)

(1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this subsection (m), "government building" means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and records include, but are not limited to:

(A) Information and records about alarm and security systems used at the government building, including codes, passwords, wiring diagrams, plans and security procedures and protocols related to the security systems;

(B) Security plans, including security-related contingency planning and emergency response plans;

(C) Assessments of security vulnerability;

(D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and

(E) Surveillance recordings, whether recorded to audio or visual format, or both, except segments of the recordings may be made public when they include an act or incident involving public safety or security or possible criminal activity. In addition, if the recordings are relevant to a civil action or criminal prosecution, then the recordings may be released in compliance with a subpoena or an order of a court of record in accordance with the Tennessee rules of civil or criminal procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. Release of any segment or segments of the recordings shall not be construed as waiving the confidentiality of the remaining segments of the audio or visual tape.

(2) Information made confidential by this subsection (m) shall be redacted wherever possible and nothing in this subsection (m) shall be used to limit or deny access to otherwise public information because a file or document contains confidential information.

(n)

(1) Notwithstanding any law to the contrary, the following documents submitted to the state in response to a request for proposal or other procurement method shall remain confidential after completion of the evaluation period:

(A) Discount, rebate, pricing or other financial arrangements at the individual drug level between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers, as defined in § 56-7-3102, that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement methods for pharmacy-related benefits or services;

(ii) Includes in its cost or price proposal, or provides to the state after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee; and

(iii) Explicitly marks as confidential and proprietary; and

(B) Discount, rebate, pricing or other financial arrangements at the individual provider level between health care providers and health insurance entities, as defined in § 56-7-109, insurers, insurance arrangements and third party administrators that a proposer:

(i) Submits to the state in response to a request for proposals or other procurement method after the notice of intended award of the contract is issued, where the proposer is the apparent contract awardee, in response to a request by the state for additional information; and

(ii) Explicitly marks as confidential and proprietary.

(2)

(A) Information made confidential by subdivision (n)(1) shall be redacted wherever possible; and nothing contained in this subsection (n) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. The confidentiality established by subdivision (n)(1)(B) is applicable only to information submitted to the state after completion of the evaluation period; and provision of the notice of intended award of the contract and such information shall only be used to validate the accuracy of the apparent contract awardee's proposal and shall not be used to alter the scope of the information required by the state's procurement document requesting proposals. Any report produced by the state, or on the state's behalf, utilizing the information made confidential by subdivision (n)(1)(B) shall not be considered confidential hereunder so long as such report is disclosed in an aggregate or summary format without disclosing discount, rebate, pricing or other financial arrangements at the individual provider level.

(B) The comptroller of the treasury, for the purpose of conducting audits or program evaluations, shall have access to the discount, rebate, pricing and descriptions of other financial arrangements cited in this subsection (n) as submitted in a procurement or as a report to the contractor; provided, however, that no official, employee or agent of the state of Tennessee may release or provide for the release, in any form, of information subject to confidential custody under this subsection (n).

(o)

(1) Except as provided in subdivisions (o)(2)-(4), the following information and records are confidential, not open or available for public inspection and shall not be released in any manner:

(A) All information contained in any application for a handgun carry permit issued pursuant to § 39-17-1351, § 39-17-1365, or § 39-17-1366, a permit renewal application, or contained in any materials required to be submitted in order to obtain such a permit;

(B) All information provided to any state or federal agency, to any county, municipality, or other political subdivision, to any official, agent, or employee of any state or federal agency, or obtained by any state or federal agency in the course of its investigation of an applicant for a handgun carry permit; and

(C) Any and all records maintained relative to an application for a handgun carry permit issued pursuant to § 39-17-1351, § 39-17-1365, or § 39-17-1366, a permit renewal application, the issuance, renewal, expiration, suspension, or revocation of a handgun carry permit, or the result of any criminal history record check conducted under this part.

(2) Any information or other records regarding an applicant or permit holder may be released to a law enforcement agency for the purpose of conducting an investigation or prosecution, or for determining the validity of a handgun carry permit, or to a child support enforcement agency for purposes of child support enforcement, but shall not be publicly disclosed except as evidence in a criminal or child support enforcement proceeding.

(3) Any person or entity may request the department of safety to search its handgun permit holder database to determine if a named person has a Tennessee handgun carry permit, as of the date of the request, if the person or entity presents with the request a judgment of conviction, criminal history report, order of protection, or other official government document or record that indicates the named person is not eligible to possess a handgun carry permit under the requirements of § 39-17-1351, § 39-17-1365, or § 39-17-1366.

(4) Nothing in this subsection (o) shall prohibit release of the handgun carry permit statistical reports authorized by § 39-17-1351(s).

(p) Information, records, and plans that are related to school security, the district-wide school safety plans or the building-level school safety plans shall not be open to public inspection. Nothing in this part shall be interpreted to prevent school administrators of an LEA from discussing or distributing information to parents or legal guardians of children attending the school regarding procedures for contacting or obtaining a child following a natural disaster.

(q)

(1) Where a defendant has pled guilty to, or has been convicted of, and has been sentenced for a sexual offense or violent sexual offense specified in § 40-39-202, the following information regarding the victim of the offense shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Name, unless waived pursuant to subdivision (q)(2);

(B) Home, work and electronic mail addresses;

(C) Telephone numbers;

(D) Social security number; and

(E) Any photographic or video depiction of the victim.

(2)

(A) At any time after the defendant or defendants in a case have been sentenced for an offense specified in subdivision (q)(1), the victim of such offense whose name is made confidential pursuant to subdivision (q)(1)(A) may waive such provision and allow the victim's name to be obtained in the same manner as other public records.

(B) The district attorney general prosecuting the case shall notify the victim that the victim has the right to waive the confidentiality of the information set forth in subdivision (q)(1)(A).

(C) If the victim executes a written waiver provided by the district attorney general's office to waive confidentiality pursuant to subdivision (q)(2)(A), the waiver shall be filed in the defendant's case file in the office of the court of competent jurisdiction.

(3) Nothing in this subsection (q) shall prevent the district attorney general or attorney general and reporter and counsel for a defendant from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subsection (q).

(4) Nothing in this subsection (q) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (q)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public.

(5) Nothing in this subsection (q) shall be construed to limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(r) Notwithstanding any provision to the contrary, any bank account information that is received, compiled, or maintained by a state governmental agency, shall be confidential and shall not be an open record for inspection by members of the public. The bank

account information that shall be kept confidential includes, but is not limited to, debit card numbers and any related personal identification numbers (PINs) or authorization codes, bank account numbers, and transit routing numbers.

(s) The records of the insurance verification program created pursuant to the James Lee Atwood Jr. Law, compiled in title 55, chapter 12, part 2, in the possession of the department of revenue or its agent, the department of safety, the department of commerce and insurance, law enforcement, and the judiciary pursuant to the James Lee Atwood Jr. Law, shall be treated as confidential and shall not be open for inspection by members of the public. Subsection (c) shall not apply to the records described in this subsection (s)s

(t)

(1) The following information concerning the victim of a criminal offense who is a minor shall be treated as confidential and shall not be open for inspection by members of the public:

(A) Name, unless waived pursuant to subdivision (t)(2);

(B) Home, work, and electronic mail addresses;

(C) Telephone numbers;

(D) Social security number;

(E) Any photographic or video depiction of the minor victim; and

(F) Whether the defendant is related to the victim unless the relationship is an essential element of the offense.

(2) The custodial parent or legal guardian of the minor victim of an offense whose name is made confidential pursuant to subdivision (t)(1)(A) may petition a court of record to waive confidentiality and allow the minor victim's name to be obtained in the same manner as other public records. Upon finding good cause shown, the court shall enter the order granting the waiver.

(3) This subsection (t) shall not be construed to:

(A) Restrict the application of Rule 16 of the Tennessee Rules of Criminal Procedure in any court or the disclosure of information required of counsel by the state or federal constitution;

(B) Limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (t)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public;

(C) Limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions; or

(D) Limit or prevent law enforcement from releasing information included in this subsection (t) for the purposes of locating and identifying missing, exploited, or abducted minors

(u)

(1) Video taken by a law enforcement body camera that depicts the following shall be treated as confidential and not subject to public inspection:

(A) Minors, when taken within a school that serves any grades from kindergarten through grade twelve (K-12);

(B) The interior of a facility licensed under title 33 or title 68; or

(C) The interior of a private residence that is not being investigated as a crime scene.

(2) Nothing in this subsection (u) shall prevent the district attorney general or attorney general and reporter and counsel for a defendant charged with a criminal offense from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information which otherwise may be held confidential under this subsection (u).

(3) Nothing in this subsection (u) shall be used to limit or deny access to otherwise public information because a file, document, or data file contains some information made confidential by subdivision (u)(1); provided, that confidential information shall be redacted before any access is granted to a member of the public.

(4) Nothing in this subsection (u) shall be construed to limit access to records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(5) This subsection (u) is deleted on July 1, 2022, and shall no longer be effective on and after such date.

(v) Notwithstanding any law to the contrary, examination questions, answer sheets, scoring keys, and other examination data used for the purpose of licensure, certification, or registration of health professionals under title 63 or title 68 shall be treated as confidential and shall not be open for inspection by members of the public; provided, however, that:

(1) A person who has taken such an examination has the right to review the person's own completed examination; and

(2) Final examination scores of persons licensed, certified, or registered as health professionals under title 63 or title 68 shall be open for inspection by members of the public, upon request.

(w)

(1) Notwithstanding any law to the contrary, information that is reasonably likely to identify a student accused of committing an alleged sexual offense or alleged violent sexual offense as defined in § 40-39-202 or any information that is reasonably likely to identify the victim of an alleged sexual offense or alleged violent sexual offense as defined in § 40-39-202, must be treated as confidential and not be open for inspection by members of the public.

(2) Nothing in this subsection (w):

(A) Limits or denies access to otherwise public information because a file, document, or data file contains information that is reasonably likely to identify a student accused of committing a sexual offense or violent sexual offense or the victim of a sexual offense or violent sexual offense; however, all information that is reasonably likely to identify a student accused of committing a sexual offense or violent sexual offense, or the victim of a sexual offense or violent sexual offense must be redacted before any access is granted to a member of the public for inspection;

(B) Prevents the district attorney general, the attorney general and reporter, or counsel for a defendant from providing to each other in a pending criminal case or appeal, where the constitutional rights of the defendant require it, information that otherwise may be held confidential under this subsection (w); or

(C) Limits access to records by law enforcement agencies, courts, or other governmental agencies or instrumentalities performing official functions.

(x)

(1) The following information regarding donors to the state museum is confidential and not open for inspection by members of the public, upon the donor's advance request; provided, however, that the museum may disclose such information as authorized or required by law:

(A) Residential information, including the street address, city, state, and zip code;

(B) Home telephone and personal cell phone numbers;

(C) Social security number;

(D) Electronic mail address; and

(E) Taxpayer identification number.

(2) This subsection (x) is repealed effective July 1, 2026.

40-38-303. Victim's immunity from suit except for testimony that is intentionally and maliciously false and defamatory.

(a) In order for a victim of crime to meaningfully exercise the victim's constitutional right to be heard, when relevant, at all critical stages of the criminal justice process, a victim is immune from civil liability or any civil cause of action brought by the offender that arises from the victim's testimony at the offender's hearing before the board of parole or a panel of the board. The immunity from suit shall not apply if the victim's testimony is intentionally and maliciously false and defamatory.

(b)

(1) If the offender brings a cause of action against the victim based upon the victim's testimony before the board of parole or a panel of the board, in spite of the immunity conferred by subsection (a), as an attachment to the complaint, the offender shall proffer all statements made by the victim alleged to be intentionally and maliciously false and defamatory. Within five (5) days the court shall examine the offender's complaint to determine if the statements of the victim proffered by the offender could reasonably be construed as sufficient to overcome the victim's immunity conferred by this section.

(2) If the court finds that the victim's statements to the board of parole or a panel of the board may reasonably be construed as intentionally and maliciously false and defamatory, it shall allow the cause of action to proceed.

(3) If the court finds that the offender has not produced sufficient evidence to overcome the victim's immunity conferred by subsection (a), it shall dismiss the cause of action with prejudice.

(4) If the court finds that, not only was the action without merit but was brought for the purpose of intimidating, harassing or abusing the victim in violation of the Constitution of Tennessee, Article I, § 35, it:

(A) Shall notify the appropriate warden of the offender's institution and recommend disciplinary action against the offender, including the loss of sentence reduction credits; and

(B) May prohibit the offender from filing any future actions of a similar nature in the court.

40-38-601. Part definitions.

As used in this part:

(1) "Address confidentiality program" or "program" means the program created under this part to protect the confidentiality of the confidential address of a relocated victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense;

(2) "Administrator of elections" means the chief county election administrative officer appointed by the county election commission and such official's designee or designees;

(3) "Application" means the form or forms submitted, in the manner prescribed by the secretary of state, by an individual requesting certification for the address confidentiality program;

(4) "Application assistant" means an employee or volunteer at an agency or organization that serves victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense, who has received training and certification from the secretary of state to help individuals complete applications to be program participants;

(5) "Confidential address" means the actual address of a program participant's residence, school, institution of higher education, business, or place of employment, as specified on an application to be a program participant or on a notice of change of address filed under this part;

(6) "Coordinator of elections" means the official appointed by the secretary of state in accordance with § 2-11-201 as the chief administrative election officer of the state and such official's designee or designees;

(7) "Domestic abuse" has the same meaning as defined in § 36-3-601;

(8) "Domestic abuse victim" has the same meaning as defined in § 36-3-601;

(9) "Fiduciary" has the same meaning as defined in § 34-1-101;

(10) "Governmental entity" means the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the state or a political subdivision of the state;

(11) "Human trafficking" has the same meaning as used in § 39-13-314;

(12) "Minor" has the same meaning as defined in § 34-1-101;

(13) "Parent" includes biological and adoptive parents, as defined in § 36-1-102;

(14) "Person with a disability" has the same meaning as defined in § 34-1-101;

(15) "Process" means judicial process and all orders, demands, notices, or other papers required or permitted by law to be served on a program participant;

(16) "Program participant" means a person who is certified by the secretary of state as a program participant;

(17) "Secretary of state" or "secretary" means the secretary of state of Tennessee and any designee of the secretary;

(18) "Sexual offender" has the same meaning as defined in § 40-39-202;

(19) "Sexual offense" means a sexual offense or violent sexual offense as defined in § 40-39-202;

(20) "Stalking" has the same meaning as defined in § 39-17-315; and

(21) "Substitute address" means an address designated by the secretary of state under the address confidentiality program that is used instead of a confidential address as set forth by this part.

40-38-602. Crime victim address confidentiality program.

(a) The secretary of state shall establish a crime victim address confidentiality program, which must be open to all Tennessee residents who are victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense who satisfy the requirements of this part, at no cost to the program participant.

(b) This program shall provide the participant with the use of a substitute address for the participant and the participant's minor children and shall not disclose the participant's name, confidential address, phone number, or any other information contained within the program participant's file except as otherwise provided by this part.

(c) Whenever a program participant is required by law to swear to or affirm the participant's address, the participant may use the participant's substitute address. Wherever a program participant is required by law to establish residency, the participant may present evidence of program participation and use the participant's substitute address. Where residency must be verified in order to establish eligibility for public benefits, the governmental entity requiring verification shall submit a written request to the secretary of state, on a form prescribed by the secretary of state, whereby the secretary of state shall provide the governmental entity with a statement as to whether the program participant, or the program participant's minor child, or a person with a disability on whose behalf the person is applying, is eligible for benefits, based on the information known to the secretary of state.

(d) The substitute address shall not be used:

(1) For purposes of listing, appraising, or assessing property taxes and collecting property taxes; or

(2) On any document related to real property recorded with a county clerk and recorder.

(e) Notwithstanding any other applicable law, the substitute address may be used for motor vehicle records and may be printed on a person's driver or photo identification license.

(f) Except as otherwise provided in this part, a program participant's confidential address, and any other information contained within a program participant's file, maintained by a state or local government agency, or disclosed by the secretary of state under this part, is not a public record. This subsection (f) shall not apply:

(1) To any public record created more than thirty (30) days prior to the date that the program participant applied to be certified in the program; or

(2) If a program participant voluntarily requests that a state or local government agency use the participant's confidential address or voluntarily gives the confidential address to the state or local government agency, except voter registration records and absentee ballot requests shall be confidential for purposes of this part.

(g) For any public record created within thirty (30) days prior to the date that a program participant applied to be certified in the program, a state or local governmental agency shall redact the confidential address from a public record or change the confidential address to the substitute address in the public record, if a program participant presents evidence of program certification and requests the agency that maintains the public record to use the substitute address instead of the confidential address on the public record.

(h) Except as provided in this part, where a program participant has provided evidence of program participation to a governmental entity, any record that includes a program participant's confidential address pursuant to this part shall be confidential and not available for inspection by anyone other than the program participant.

(i) Notwithstanding any other applicable law, documentation concerning any tool of designation or identification or internal processes implemented by a governmental entity in documenting program participation within the governmental entity's records shall be confidential and not available for inspection.

(j) An application or voter registration form completed under this part, along with any supporting materials, is not a public record that is subject to inspection and shall be kept confidential.

40-38-603. Eligibility to participate in address confidentiality program.

A person who is required by law to be registered under any of the following is not eligible to participate in the address confidentiality program:

(1) Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, compiled in chapter 39, part 2 of this title;

(2) Tennessee Animal Abuser Registration Act, compiled in chapter 39, part 1 of this title;

(3) Registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals, compiled in title 68, chapter 11, part 10; or

(4) Drug offender registry under § 39-17-436.

40-38-604. Application for substitute address.

(a) Except for a person described in § 40-38-603, an adult person, or a parent or fiduciary acting on behalf of a minor or person with a disability, may apply to the secretary of state with the assistance of an application assistant to have an address designated by the secretary of state serve as the person's substitute address, or the substitute address of the minor or person with a disability on whose behalf the application is filed, where the applicant, or the individual on whose behalf the application is filed, has either relocated to a new residence within the preceding thirty (30) calendar days or presently intends to relocate to a new residence within ninety (90) calendar days from the date of the application. The application shall be made on a form prescribed by the secretary of state and filed in the office of the secretary of state in the manner prescribed by the secretary of state.

(b) The application must contain all of the following:

(1) The mailing address and telephone number or numbers at which the secretary of state may contact the applicant;

(2) The address or addresses of the applicant's residence, school, institution of higher education, business, or place of employment that the applicant requests not be disclosed for the reason that disclosure will increase the risk that the applicant, or the minor or person with a disability on whose behalf the application is made, will be threatened or physically harmed by another person;

(3) Documentary evidence that, either:

(A) There exists an ongoing criminal case that may result or a criminal case that has resulted in a conviction by a judge or jury or by a defendant's guilty plea, in which the applicant, or the minor or person with a disability on whose behalf the application was filed, was a victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense; or

(B) A court of competent jurisdiction has granted an order of protection to the applicant, or the minor or person with a disability on whose behalf the application is made, and which is in effect at the time of application;

(4) In the absence of an ongoing criminal case that may result or has resulted in a conviction or an order of protection granted by a court of competent jurisdiction within this state which is in effect at the time of application, a notarized statement by a licensed professional with knowledge of the circumstances, such as an attorney, social worker, or therapist, confirming that such individual believes that the applicant, or the minor or person with a disability on whose behalf the application is made, is in danger of further harm;

(5) A sworn statement by the applicant that disclosure of the confidential address or addresses would endanger the safety of the applicant or the minor or person with a disability on whose behalf the application is made;

(6)

(A) Documentary evidence, in the form and manner prescribed by rule by the secretary of state, that the applicant, or the minor or person with a disability on whose behalf the application is made, has moved to a new residence unknown to the offender within the previous thirty (30) calendar days; or

(B) A sworn statement by the applicant that the applicant, or the minor or person with a disability on whose behalf the application is made, has the present intent to move to a new address unknown to the offender within the following ninety (90) calendar days. If the applicant does not move to a new address within the following ninety (90) calendar days or fails to provide documentary evidence of the new residence address to the secretary of state within this time frame, in the form and manner prescribed by rule by the secretary of state, the program participant's certification shall be cancelled;

(7) A voter registration form to be completed if the applicant is eligible to vote and wishes to register to vote or update a current voter registration;

(8) A sworn statement that the program participant understands all of the following:

(A) That during the time the program participant chooses to have a confidential voter registration record, the program participant may vote only by absentee ballot;

(B) That the program participant may provide a program participant identification number instead of the residence address on an application for an absentee ballot or on an absentee voter's ballot identification envelope statement of voter with the applicant's signature;

(C) That casting any ballot in person will reveal the program participant's precinct and residence address to precinct election officials and employees of the county election commission and may reveal the program participant's precinct or residence address to members of the public; and

(D) That if the program participant signs an election petition, the program participant's residence address will be made available to the public;

(9) A knowing and voluntary designation of the secretary of state as the agent for the purposes of receiving service of process and the receipt of mail;

(10) A knowing and voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program, except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner;

(11) The notarized signature of the applicant, the name and notarized signature of the application assistant who assisted the applicant, and the date on which the applicant and the application assistant signed the application; and

(12) If at the time of application, the applicant, or the minor or person with a disability on whose behalf the application is made, is subject to a court order or is involved in court action related to the dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the name of the court, contact information for the court, and the case number associated with those proceedings.

(c) Upon receiving a properly completed application under subsection (a), the secretary of state shall:

(1) Certify the applicant, or the minor or person with a disability on whose behalf the application is filed, as a program participant and provide evidence of such certification to the program participant;

(2) Designate each eligible address listed in the application as a confidential address;

(3) Issue the program participant a unique substitute address;

(4) Issue the program participant a unique program participant identification number;

(5) Provide information to the program participant concerning the manner in which the program participant may use the secretary of state as the program participant's agent for the purposes of receiving mail and receiving service of process;

(6) Provide information to the program participant concerning the process to vote as a program participant, if the program participant is eligible to vote; and

(7) Forward all first class mail, legal documents, and certified mail received by the secretary of state to the program participant.

40-38-605. Notification of change of program participant's address — Renewal of certification.

(a) A program participant shall notify the office of the secretary of state of any change in the participant's residence address and application information within thirty (30) days after any change has occurred by submitting a notice of change to the office of the secretary of state on a form prescribed by the secretary of state. If registered to vote, the applicant shall also complete a change of address form for voter registration purposes.

(b) The certification of a program participant shall be valid for four (4) years after the date of the filing of the application for the program participant, unless the certification is withdrawn or invalidated before the end of that four-year period.

(c) A program participant who continues to be eligible to participate in the program may renew the program participant's certification by submitting a renewal application to the secretary of state with the assistance of an application assistant. The renewal application shall be on a form prescribed by the secretary of state and shall contain all of the information described in § 40-38-604.

(d) When a program participant renews the program participant's certification, the program participant shall continue to use the program participant's original program participant identification number and substitute address.

40-38-606. Request that governmental and private entities use substitute address — Registration as voter — Service of process.

(a) A program participant may request that a governmental entity use the address designated by the secretary of state as the program participant's substitute address. Except as otherwise provided by this part, if the program participant requests that a governmental entity use the substitute address and provides evidence of certification as a program participant, the governmental entity shall accept the substitute address.

(b) If a program participant's employer, school, or institution of higher education is not a governmental entity, the program participant may request that the employer, school, or institution of higher education use the substitute address designated by the secretary of state as the program participant's address.

(c) The program participant may also request that private businesses and other non-governmental entities use the substitute address designated by the secretary of state as the program participant's address.

(d) Program participants shall not be required to provide their confidential address to any public school for purposes of enrollment for themselves or their minor children, but rather shall be permitted to provide the public school with evidence of certification as a program participant and the participant's substitute address. Where residency must be verified in order to enroll a student in a public school, the individual responsible for verifying eligibility for enrollment shall submit a written request to the secretary of state, on a form prescribed by the secretary of state, whereby the secretary of state shall provide that individual with a statement as to whether the program participant, or the program participant's minor child, is eligible for enrollment, based on the information known to the secretary of state.

(e) A program participant may be required to provide the program participant's residence address for purposes of obtaining utility services. Notwithstanding any contrary law, and except as otherwise provided by this part, if a program participant provides a utility service provider with evidence of certification as a program participant, the utility service provider shall treat the program participant's residence address and identifying information as confidential in accordance with the procedures established at § 10-7-504(a)(15). In such instances, the program participant may also request that the utility service provider use the substitute address.

(f) Except as otherwise provided in this part, it shall be the responsibility of the program participant to provide the program participant's substitute mailing address to all governmental and private entities to ensure the confidentiality of the program participant's confidential address.

(g) A participant shall be registered as a voter of the precinct in which the person is a resident.

(h)

(1) The office of the secretary of state shall place all first class mail, legal documents, and certified mail received by the secretary of state on behalf of a program participant into an envelope or package and mail that envelope or package to the program participant at the mailing address the program participant provided to the secretary of state for that purpose within three (3) business days of receipt. The secretary of state may contract with the United States postal service to establish special postal rates for the envelopes or packages used in mailing a program participant's first class mail, legal documents, and certified mail under this section.

(2)

(A) Upon receiving service of process on behalf of a program participant, the office of the secretary of state shall immediately forward the process by certified mail, return receipt requested, to the program participant at the mailing address the program participant provided to the secretary of state for that purpose. Service of process upon the office of the secretary of state on behalf of a program participant shall constitute service upon the program participant under the Rules of Civil Procedure.

(B) The secretary of state may prescribe by rule the manner in which process may be served on the secretary of state as the agent of a program participant.

(C) Upon request by a person who intends to serve process on an individual, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

40-38-607. Confidentiality of program participant's voter registration record — Voter registration and absentee deadlines applicable — Exemption from jury duty.

(a) The coordinator of elections and the administrator of elections shall keep a program participant's voter registration record confidential.

(b) The form shall be stored in a secure manner and the coordinator of elections and administrator of elections shall have access to the form and to the residence address contained in the form.

(c) The coordinator of elections and administrator of elections shall record the program participant's program participant identification number in a separate voter registration database with the participant's name, residence address, and precinct. This list shall be confidential. Only the participant identification number shall be included in the statewide official voter registration list, which contains all active and inactive voters.

(d) The coordinator of elections and administrator of elections shall, as appropriate, direct that the program participant's name, address, and precinct information, as well as any other contact information, be removed from the program participant's voter registration record, voter registration databases, and the official registration list, as well as any pollbook, poll list, or signature pollbook in which it appears and from any publicly available registration list in which it appears.

(e) If the program participant is registered to vote in another state, the coordinator of elections or administrator of elections shall notify the appropriate authority in that state to cancel the program participant's voter registration.

(f) The coordinator of elections shall inform the program participant:

(1) That the program participant is being placed on the absentee list pursuant to § 40-38-602;

(2) That if the program participant wishes to vote in an election and keep their residence address confidential, the program participant shall cast an absentee ballot by mail;

(3) Of the procedure for the program participant to cast an absentee ballot;

(4) That appearing in person will reveal the program participant's precinct and residence address to precinct election officials and employees of the election commission and may reveal the program participant's precinct or residence address to members of the public; and

(5) That if the program participant appears in person, the individual must cast a provisional ballot.

(g) If the program participant submits an absentee ballot, such ballot shall be processed by the administrator of elections in order to ensure the highest level of confidentiality and protection of the voting process.

(h) All applicable voter registration and absentee deadlines shall apply. The coordinator of elections may establish procedures for the submission and processing of absentee ballots for such participants in accordance with this part and other applicable law.

(i) Program participants will be exempt from selection for state and municipal jury duty.

40-38-608. Cancellation of program participant's certification — Notice of cancellation — Request to withdraw from program — Responsibility to notify others that substitute address is no longer valid.

(a) The secretary of state shall cancel the certification of a program participant if any of the following are true:

(1) The program participant's application contained one or more false statements;

(2) The program participant failed to relocate to a new address or failed to provide documentary evidence of the new residence address to the secretary of state, in the form and manner prescribed by the secretary of state, within ninety (90) days from the date of application, unless the secretary of state determines that the program participant is currently residing at a shelter, as defined by § 71-6-202, or a similar facility;

(3) The program participant obtains a name change, unless the program participant provides the secretary of state with documentation of a legal name change within ten (10) business days of the name change;

(4) The program participant's certification has expired and the program participant has not renewed the certification in accordance with § 40-38-605;

(5) The program participant is found by the secretary of state, after proper notice, to be unreachable for a period of twenty (20) days or more, as defined by rules promulgated by the secretary of state;

(6) The secretary of state becomes aware that circumstances have changed such that the participant no longer meets the criteria set forth under this part that would allow participation in the program; or

(7) The participant submits to the secretary of state a written, notarized request to cease being a program participant on a form prescribed by the secretary of state.

(b) The secretary of state shall send notice of certification cancellation to the program participant setting out the reasons for cancellation. The program participant has the right to appeal the cancellation and request, within thirty (30) days from the date of the notice of cancellation, a contested case hearing before an administrative law judge, in accordance with rules promulgated by the secretary of state and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) A program participant may request to withdraw the program participant's participation in the program by submitting a written, notarized request, on a form prescribed by the secretary of state that includes all of the following.

(1) The person's program participant identification number;

(2) A statement that the participant wishes to cease being a program participant;

(3) An acknowledgement that by withdrawing their participation, the person's address will no longer be kept confidential, the secretary of state will no longer accept or process mail received on the person's behalf, and the person's voter registration will no longer be kept confidential; and

(4) A statement that the administrator of elections will either:

(A) Treat the person's existing voter registration form in the same manner as other voter registration forms; or

(B) Purge the participant's voter registration.

(d) If an individual ceases to be a program participant, by reason of either cancellation or withdrawal, it shall be the responsibility of the individual to notify persons and entities that use the substitute address that the substitute address is no longer valid.

40-38-609. Disclosure of substitute address or other information by secretary of state — Requests for disclosure.

(a) Except as otherwise provided by this part, the secretary of state shall not disclose the confidential address or any other information contained within a program participant's file, other than the substitute address designated by the secretary of state, except under the following circumstances:

(1) If directed by a court order signed by a judge of a court of competent jurisdiction;

(2) Upon written request, on a form prepared by the secretary of state, by the chief law enforcement officer of a county or municipality, or an authorized representative of the Tennessee bureau of investigation, Tennessee highway patrol, or a federal law enforcement agency, if related to an ongoing official investigation; or

(3) Upon written request, on a form prepared by the secretary of state, by a director of a state or federal agency, if the secretary of state determines that there exists a bona fide legal or administrative requirement of the use of the program participant's confidential address such that the director is unable to fulfill legal duties and obligations without the confidential address.

(b) Upon written request by the director of a state or federal agency, the chief law enforcement officer of a county or municipality, or an authorized representative of the Tennessee bureau of investigation, Tennessee highway patrol, or a federal law enforcement agency who intends to request access to an individual's confidential address under this section, or any other information contained within a program participant's file, the secretary of state shall confirm whether the individual is a program participant but shall not disclose any additional information concerning the program participant until such time as a written request for disclosure as described in this section is granted. Subject to subsections (d) and (e), a determination regarding such a written request shall be made by the secretary within three (3) business days following receipt of a completed request for disclosure.

(c) When making a request for the disclosure of the program participant's confidential address, or any other information contained within a program participant's file, whether before a court of law or by written request to the secretary of state, the party or parties requesting the disclosure must show by clear and convincing evidence that the disclosure of the confidential address or other records is necessary for a legitimate governmental purpose that cannot otherwise be accomplished and which outweighs the risk of harm to the program participant.

(d) Written requests for disclosure of the program participant's confidential address, or any other information contained within a program participant's file, shall be submitted to the office of the secretary of state, on a form prescribed by the secretary of state, for consideration by the secretary or the secretary's designee. Except for a request from a law enforcement agency under subdivision (a)(2), the secretary shall provide the program participant with notice of the requested disclosure and an opportunity to respond in writing to the request stating any objections to the disclosure. The secretary shall issue a determination in writing, which shall be provided to both the requesting party and the program participant, setting out the information that is to be disclosed and the reason for the disclosure.

(e) Any party may, within ten (10) business days of the date of the secretary's decision, appeal the secretary's decision by filing with the office of the secretary of state a written request for a contested case hearing before an administrative law judge under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, on a form prescribed by the secretary of state. The program participant, or the program participant's parent or fiduciary if applicable, shall have an opportunity to present evidence at the contested case hearing regarding the potential harm to the safety of the program participant if the program participant's confidential address, or any other information contained in the program participant's file, is disclosed. If no request for appeal is filed within ten (10) business days of the secretary's decision, then the secretary's decision shall be implemented according to its terms.

(f) Disclosure of a participant's confidential address, or any other information contained within a program participant's file, under this section shall be limited under the terms of the court's order or the secretary's determination to ensure that the disclosure and dissemination of the confidential address will be no greater than necessary for the specific purpose for which it was requested.

(g) Individuals granted access to the program participant's confidential information, whether by court order or by virtue of the individual's position as an employee of a governmental entity, are prohibited from knowingly disclosing such information to unauthorized individuals, except as otherwise required by law.

(h) No person shall knowingly obtain a program participant's confidential address or telephone number from any governmental agency knowing that the person is not authorized to obtain the address information.

(i) Nothing in this section shall be construed as to prevent the secretary of state from granting a request for disclosure to a state or local government agency pursuant to this part upon receipt of a program participant's written and notarized consent to do so.

40-38-610. Unlawful acts.

(a) A person who falsely attests in an application that disclosure of the confidential address would endanger the safety of the applicant, or the minor or person with a disability on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application commits perjury.

(b) Any individual who knowingly discloses a program participant's confidential address, or any other confidential information belonging to a program participant, in violation of this part commits a Class A misdemeanor. Where the disclosure resulted in harm to the program participant, the resulting harm shall be considered an enhancement factor when determining any punishment imposed.

(c) Any individual who knowingly obtains a program participant's confidential address, or any other confidential information belonging to a program participant, in violation of this part, knowing that the individual is not authorized to obtain the information, commits a Class A misdemeanor. Where the disclosure resulted in harm to the program participant, the resulting harm shall be considered an enhancement factor when determining any punishment imposed.

40-38-611. List of agencies that provide services to victims of domestic abuse or a sexual offense to assist persons applying to be program participants.

(a) The secretary of state shall establish a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic abuse or a sexual offense to assist persons applying to be program participants.

(b) Notwithstanding any contrary law, a state, local, or nonprofit agency or application assistant that provides counseling, shelter, or any other services to a program participant shall not be required to disclose the confidential address or any other information concerning the program participant for any reason.

(c) The secretary of state is authorized to promulgate rules under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, pertaining to application assistants and shall provide training and certification as application assistants to representatives of state, local, and nonprofit agencies that provide counseling and shelter services to victims of domestic abuse or a sexual offense. The secretary of state may partner with nonprofit agencies, or other governmental agencies, to provide training or other services in connection with the program.

(d) Any assistance or counseling rendered to an applicant by the office of the secretary of state shall in no way be construed as legal advice.

40-38-612. Effect of program participation on custody or visitation orders.

(a) Nothing in this part, including participation in the program created by this part, shall affect custody or visitation orders in effect prior to or during program participation.

(b) Program participation does not constitute evidence of domestic abuse, stalking, human trafficking, or any sexual offense and shall not be considered for purposes of making an order allocating parental responsibilities or parenting time, except that a court may consider practical measures to keep a program participant's confidential address confidential when making an order allocating parental responsibilities or parenting time.

40-38-613. Effect of negligent disclosure of program participant's confidential address — Notification of disclosure.

(a) No actionable duty or any right of action shall accrue against the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality in the event of negligent disclosure of a program participant's confidential address.

(b) In the event that the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality negligently or otherwise unlawfully discloses the program participant's confidential address, such entity must immediately upon learning of the disclosure notify the program participant of the disclosure and the full extent of the disclosure.

71-6-208. Shelter locations privileged — Service of papers or process.

(a) No person can be compelled to provide testimony or documentary evidence in a criminal, civil or administrative proceeding that would identify the address or location of a shelter.

(b) In any proceeding involving a shelter or a person staying at a shelter, the sheriff, constable or other person serving any legal papers or process shall serve any such legal papers or process by contacting the shelter by telephone and making arrangements for service of the papers or process on the shelter or the person staying at the shelter.

VI. Mandatory Reporting.

4-58-103. Verification of citizenship of applicants for benefits.

(a) Except where prohibited by federal law, every state governmental entity and local health department shall verify that each applicant eighteen (18) years of age or older, who applies for a federal, state or local public benefit from the entity or local health department, is a United States citizen or lawfully present in the United States in the manner provided in this chapter.

(b)

(1) As provided in subdivision (b)(2), every state governmental entity or local health department shall include on all forms, electronic or otherwise, and all automated phone systems, a written or verbal statement:

(A) Requiring an applicant for a federal, state or local public benefit to, under penalty of perjury, attest to the applicant's status as either:

(i) A United States citizen; or

(ii) A qualified alien; and

(B) Describing the penalties for violations of this chapter.

(2) Subdivision (b)(1) shall be implemented upon the entity's or local health department's first reprinting of applicable forms or updating of the electronic or automated phone systems, described in subdivision (b)(1), after October 1, 2012.

(c) For an applicant who claims United States citizenship, the entity or local health department shall make every reasonable effort to ascertain verification of the applicant's citizenship, which may include requesting the applicant to present any one (1) of the following:

(1)

(A) A valid Tennessee driver license or photo identification license issued by the department of safety; or

(B) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;

(2) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this subdivision (c)(2);

(3) A United States government-issued certified birth certificate;

(4) A valid, unexpired United States passport;

(5) A United States certificate of birth abroad (DS-1350 or FS-545);

(6) A report of birth abroad of a citizen of the United States (FS-240);

(7) A certificate of citizenship (N560 or N561);

(8) A certificate of naturalization (N550, N570 or N578);

(9) A United States citizen identification card (I-197, I-179);

(10) Any successor document of subdivisions (c)(4)-(9); or

(11) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.

(d)

(1) For an applicant who claims qualified alien status, the applicant shall present two (2) forms of documentation of identity and immigration status, as determined by the United States department of homeland security to be acceptable for verification through the SAVE program; provided, that no entity or local health department is required to verify such applicant's documents through the SAVE program if two (2) such documents are presented unless otherwise required by federal law.

(2) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in subdivision (d)(1), then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or the SEVIS system.

(e) Each state governmental entity or local health department shall maintain a copy of all documentation submitted by an applicant for verification in a manner consistent with the entity's or local health department's rules, regulations or policies governing storage or preservation of such documentation.

(f)

(1) Any document submitted pursuant to subsections (c) or (d) shall be presumed to be proof of an individual's eligibility under this chapter until a final verification is received by the state governmental entity or local health department, and no entity or local health department shall delay the distribution of any federal, state or local benefit based solely on the pendency of final verification.

(2) Upon receipt of a final verification that indicates that the applicant is not a United States citizen or qualified alien, the state governmental entity or local health department shall terminate any recurring benefit, and shall pursue any action applicable against the applicant pursuant to § 4-58-104 or § 4-58-105.

(g) The verification process required by this section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

37-1-401. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Child" means a person who is under eighteen (18) years of age or who is reasonably presumed to be under eighteen (18) years of age;

(2) "Department" means the department of children's services; and

(3) "Report of harm" means a report filed under § 37-1-403.

37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse — Notification to parents of abuse on school grounds or under school supervision — Confidentiality of records.

(a)

(1) Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect.

(2) Any such person with knowledge of the type of harm described in this subsection (a) shall report it, by telephone or otherwise, to the:

(A) Judge having juvenile jurisdiction over the child;

(B) Department, in a manner specified by the department, either by contacting a local representative of the department or by utilizing the department's centralized intake procedure, where applicable;

(C) Sheriff of the county where the child resides; or

(D) Chief law enforcement official of the municipality where the child resides.

(3) If any such person knows or has reasonable cause to suspect that a child has been sexually abused, the person shall report such information in accordance with § 37-1-605, relative to the sexual abuse of children, regardless of whether such person knows or believes that the child has sustained any apparent injury as a result of such abuse.

(b) The report shall include, to the extent known by the reporter, the name, address, telephone number and age of the child, the name, address, and telephone number of the person responsible for the care of the child, and the facts requiring the report. The report may include any other pertinent information

(c)

(1) If a law enforcement official or judge becomes aware of known or suspected child abuse, through personal knowledge, receipt of a report, or otherwise, such information shall be reported to the department immediately upon the receipt of such

information, and, where appropriate, the child protective team shall be notified to investigate the report for the protection of the child in accordance with this part. Further criminal investigation by such official shall be appropriately conducted in coordination with the team or department to the maximum extent possible.

(2) A law enforcement official or judge who knows or becomes aware of a person who is convicted of a violation of § 55-10-401 and sentenced under § 55-10-402(b), because such person was at the time of the offense accompanied by a child under eighteen (18) years of age, shall report such information, as provided in subdivision (c)(1), and the department shall consider such information to be appropriate for investigation in the same manner as other reports of suspected child abuse or neglect.

(3)

(A) If the department receives information containing references to alleged human trafficking or child pornography which does or does not result in an investigation by the department, the department shall notify the appropriate law enforcement agency immediately upon receipt of such information.

(B) If the department initiates an investigation of severe child abuse, including, but not limited to, child sexual abuse, the department shall notify the appropriate local law enforcement agency immediately upon assignment of such case to a department child protective services worker.

(C) Both the department and law enforcement shall maintain a log of all such reports of such information received and confirmation that the information was sent to the appropriate party, pursuant to this subdivision (c)(3).

(d) Any person required to report or investigate cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-409.

(e) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to Acts 1985, ch. 478, relative to the sexual abuse of children. Investigations of institutional child sexual abuse shall be conducted in accordance with § 37-1-606.

(f) Every physician or other person who makes a diagnosis of, or treats, or prescribes for any sexually transmitted disease set out in § 68-10-112, or venereal herpes and chlamydia, in children thirteen (13) years of age or younger, and every superintendent or manager of a clinic, dispensary or charitable or penal institution, in which there is a case of any of the diseases, as set out in this subsection (f), in children thirteen (13) years of age or younger shall report the case immediately, in writing on a form supplied by the department of health to that department. If the reported cases are confirmed and if sexual abuse is suspected, the department of health will report the case to the department of children's services. The department of children's services will be responsible for any necessary follow-up.

(g) Every physician or other person who makes an initial diagnosis of pregnancy to an unemancipated minor, and every superintendent or manager of a clinic, dispensary or charitable or penal institution in which there is a case of an unemancipated minor who is determined to be pregnant, shall provide to the minor's parent, if the parent is present, and the minor consents, any readily available written information on how to report to the department of children's services an occurrence of sex abuse that may have resulted in the minor's pregnancy, unless disclosure to the parent would violate the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq., or the regulations promulgated pursuant to the act.

(1) Failure to provide the written information shall not subject a person to the penalty provided by § 37-1-412.

(2) The department of children's services shall provide to the department of health the relevant written information. The department of health shall distribute copies of the written information to all licensees of the appropriate health-related boards through the boards' routinely issued newsletters. At the time of initial licensure, these boards shall also provide new licensees a copy of the relevant written information for distribution pursuant to this subsection (g).

(h) Nothing in this section shall be construed to prohibit any hospital, clinic, school, or other organization responsible for the care of children, from developing a specific procedure for internally tracking, reporting, or otherwise monitoring a report made by a member of the organization's staff pursuant to this section, including requiring a member of the organization's staff who makes a report to provide a copy of or notice concerning the report to the organization, so long as the procedure does not inhibit, interfere with, or otherwise affect the duty of a person to make a report as required by subsection (a). Nothing in this section shall prevent staff of a hospital or clinic from gathering sufficient information, as determined by the hospital or clinic, in order to make an

appropriate medical diagnosis or to provide and document care that is medically indicated, and is needed to determine whether to report an incident as defined in this part. Those activities shall not interfere with nor serve as a substitute for any investigation by law enforcement officials or the department; provided, that, if any hospital, clinic, school or other organization responsible for the care of children develops a procedure for internally tracking, reporting or otherwise monitoring a report pursuant to this section, the identity of the person who made a report of harm pursuant to this section or § 37-1-605 shall be kept confidential.

(i)

(1) Any school official, personnel, employee or member of the board of education who is aware of a report or investigation of employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including, but not limited to, child physical or sexual abuse or neglect, shall immediately upon knowledge of such information notify the department of children's services or anyone listed in subdivision (a)(2) of the abuse or alleged abuse.

(2) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends such school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to this section and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report pursuant to this section has been made and shall provide other information relevant to the future wellbeing of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department of children's services, judge or law enforcement; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

(3) Once notice is given pursuant to subdivision (i)(2), the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this subdivision (i)(3) shall not include records of other agencies or departments.

(4) For purposes of this subsection (i), “school” means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school

37-1-406. Availability for receiving reports — Commencement of investigations — Examination and observation of child — Reports — Services provided — Investigators — Interpreter for child who is deaf or hard of hearing.

(a) The department shall be capable of receiving and investigating reports of child abuse twenty-four (24) hours a day, seven (7) days a week. The county office shall make a thorough investigation promptly after receiving either an oral or written report of harm. All representatives of the child protective services agency shall, at the initial time of contact with the individual who is subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual consistent with laws protecting the rights of the informant. If it appears that the immediate safety or well being of a child is endangered, that the family may flee or the child will be unavailable, or that the facts otherwise warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In the event the report involves child sexual abuse, the department shall follow the procedures outlined in subsection (b).

(b) In cases involving child sexual abuse, the investigation shall be conducted by a child protective investigation team as defined in § 37-1-602 relative to child sexual abuse pursuant to the provisions of § 37-1-606. In the event an immediate investigation has been initiated, the department shall notify the child protection team as soon as possible and the team shall proceed with the investigation in accordance with the provisions of Acts 1985, ch. 478. Other cases of child abuse may be investigated by the team in the discretion of each individual team.

(c) All private schools, as defined by § 49-6-3001, church-related schools, as defined by § 49-50-801, and state, county and local agencies shall give the team access to records in their custody pertaining to the child and shall otherwise cooperate fully with the investigation.

(d) The investigation shall include:

(1) The nature, extent and cause of the harm, including a determination of whether there exists a threat of harm, and the nature and extent of any present or prior injuries or abuse;

(2) The identity of the person responsible for it;

(3) The nature and extent of any previous allegations, complaints, or petitions of abuse or dependency and neglect against the parent or person responsible for the care of the child;

(4) The names and conditions of the other children in the home;

(5) An evaluation of the parents or persons responsible for the care of the child, the home environment, and the relationship of each child to the parents or persons responsible for such child's care;

(6) The identity of any other persons in the same household;

(7) The identity of any other children in the care of any adult residing in the household; and

(8) All other pertinent data.

(e) The investigation shall include a visit to the child's home, an interview with and the physical observation of the child, an interview with and the physical observation of any other children in the child's home, and an interview with the parent or parents or other custodian of the child and any other persons in the child's home. If the investigator deems it necessary, the investigation shall also include medical, psychological or psychiatric examinations of the child and any other children in the child's home or under the care of any person alleged to have permitted or caused abuse, neglect or sexual abuse to the child. If the investigator determines, based on a visit to the child's home, observation of and interview with the subject child, and interview with other persons in the child's home, that the report of harm was wholly without substance, the investigator may determine that physical and psychological examinations of the subject child are unnecessary, in which case they will not be required. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, the juvenile court, upon cause shown, shall order the parents or person responsible for the care of the child or the person in charge of any place where the child may be, to allow entrance for the interview, examination, and investigation. If the report of harm indicates that the abuse, neglect or sexual abuse occurred in a place other than the child's home, then, in the discretion of the investigator, the investigation may include a visit to the location where the incident occurred or a personal interview with the child and the parents or other custodians in another location instead of a visit to the child's home.

(f) Any person required to investigate cases of child abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and of any objects or conditions in the child's home or surroundings that could have caused or contributed to the harm to the child. If the nature of the child's injuries indicate a need for immediate medical examination or treatment, the investigator may take or cause the child to be taken for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian or legal custodian. Any licensed physician who, based on information furnished by the investigator, the parents or other persons having knowledge of the situation, or the child, or on personal observation of the child, suspects that an injury was the result of child abuse, may authorize appropriate examinations to be performed on the child without the consent of the child's parent, legal guardian or legal custodian.

(g) At the initial investigation of child abuse and at any subsequent investigation as deemed appropriate by the investigator, audio or videotape recording may be taken of the traumatized victim. Such tape shall be admissible as evidence in cases of child sexual abuse if it meets the standards established in title 24 for the use of recorded statements. Regardless of whether such recording is used in evidence, it shall be made available for use as provided in § 37-1-405(b)(2).

(h) The investigator shall interview the child outside the presence of the parent(s) or other persons allegedly responsible for the harm and, wherever possible, shall interview the child in a neutral setting other than the location where the alleged abuse occurred.

(i) No later than sixty (60) days after receiving the initial report, the department or team in cases of child sexual abuse or the department in all other cases shall determine whether the reported abuse was indicated or unfounded and report its findings to the department's abuse registry. Each member of the team shall be provided with a copy of the report in any case investigated by the team. In any case investigated solely by the department, the department shall make a complete written investigation report,

including its recommendation, to the juvenile court. The district attorney general shall also be provided a copy of any report in all cases where the investigation determines that the report was indicated. Further proceedings shall be conducted pursuant to part 1 of this chapter, as appropriate.

(j) If the department or team in cases of child sexual abuse or the department in all other cases determines that the protection of the child so requires, the department shall provide or arrange for services necessary to prevent further abuse, to safeguard and enhance the welfare of children, and to preserve family life. Such services may include provision for protective shelter, to include room and board; medical and remedial care; day care; homemaker; caretaker; transportation; counseling and therapy; training courses for the parents or legal guardian; and arranging for the provision of other appropriate services. All such services shall be provided when appropriate within the limits of available resources. These services shall first be offered for the voluntary acceptance by the parent or other person responsible for the care of the child, unless immediate removal is needed to protect the child. At any point if the department or team in cases of child sexual abuse or the department in all other cases deems that the child's need for protection so requires, it may proceed with appropriate action under part 1 of this chapter.

(k) If the investigator, as a result of the investigation, determines that there is cause to classify the report of severe abuse as indicated rather than unfounded, the team in cases of child sexual abuse or the department in all other cases may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses may forward a statement to the district attorney general as to whether such person believes prosecution is justified and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation of a report of severe abuse, the district attorney general shall advise the department or team whether or not prosecution is justified and appropriate, in the district attorney general's opinion, in view of the circumstances of the specific case.

(l) The legislative intent of this section is to protect the legal rights of the family in an investigation and to ensure that no activity occurs that compromises the department's child abuse investigation or any ongoing concurrent criminal investigation conducted by law enforcement.

(m)

(1) In jurisdictions that have implemented the multi-level response system, in addition to other investigative procedures under this section, local law enforcement officers and district attorneys general having jurisdiction shall assist the department, on request in writing, if the department determines that it is likely that the case may result in criminal prosecution or that a child protective services worker may be at risk of harm while investigating the following reports of harm:

(A) Any report of harm alleging facts that, if proved, would constitute severe child abuse as defined in § 37-1-102;

(B) Any report of harm alleging facts that, if proved, would constitute child sexual abuse as defined in § 37-1-602;

(C) Any report of harm alleging facts that, if proved, would constitute the following physical injuries to a child:

(i) Head trauma;

(ii) Broken bones;

(iii) Inflicted burns;

(iv) Organic functional impairment, as defined by the department;

(v) Broken skin;

(vi) Shaken baby syndrome;

(vii) Defensive injuries;

(viii) Injuries related to physical confinement; or

(ix) Infants exposed to illegal narcotics, including methamphetamine;

(D) Any report of harm alleging facts that, if proved, would constitute the following types of neglect:

(i) A child left without supervision in a dangerous environment;

(ii) Lack of food or nurturance resulting in a failure to thrive;

(iii) Abandonment of a child under the age of eight (8);

(iv) Lack of care that results in a life-threatening condition or hospitalization; or

(v) Inaction of the parent resulting in serious physical injury;

(E) Any report of harm alleging facts that would result in the removal of a child from the home pursuant to department policy or rule;

(F) Any report of harm alleging facts that involve a caretaker at any institution, including, but not limited to, any licensed day care center, public or private school, or hospital; or

(G) Any report of harm alleging facts that, if proved, would constitute any other class of injury identified by the department through policy or rule as necessitating investigation.

(2) If a local law enforcement agency or district attorney general assisting the department under this subsection (m) decides not to proceed with prosecution or terminates prosecution after undertaking it, the agency or district attorney general shall make a written report on a standardized check-off form developed by the department and the Tennessee district attorneys general conference to the department and the juvenile court on the basis for its decision. The department shall compile such reports and present them to the judiciary committee of the senate and the committee of the house of representatives having oversight over children and families as part of its report pursuant to the multi-level response system for children and families, compiled in chapter 5, part 6 of this title. The department shall make quarterly reports to local law enforcement agencies and district attorneys general as to the number and types of cases the department is handling in their jurisdictions on the basis of reports of harm or sexual abuse or of children at risk of being so harmed or sexually abused.

(n) If the report of child abuse alleges physical abuse, it shall be in the best interest of the child that the child be referred to a child advocacy center or that the investigation be conducted by a child protective services investigator who is adequately trained in investigating physical abuse reports. Under no circumstances shall the investigation be performed by a probation officer previously assigned to the child.

(o)

(1) Any investigator or law enforcement officer who is investigating a possible domestic abuse or child abuse incident that may have involved or occurred in the presence of a child who is deaf or hard of hearing shall not use the child's parent or family member as an interpreter. The investigator or officer shall instead communicate with the child who is deaf or hard of hearing using an interpreter trained as a sign language interpreter.

(2) The interpreter may interpret from a remote location by communicating with the child using video remote interpreting. If the child is unable to understand, then a live, qualified interpreter from the list identified in subdivision (o)(3) shall be used. The communication shall occur outside the presence of the child's parent, other family members, or potential abusers.

(3) Law enforcement agencies shall maintain a list of interpreters developed from a list provided by the Tennessee council for the deaf, deaf-blind, and hard of hearing.

37-1-410. Immunity from civil or criminal liability for reporting abuse — Damages for employment change because of making report.

(a)

(1) IF a health care provider makes a report of harm, as required by § 37-1-403; AND

IF the report arises from an examination of the child performed by the health care provider in the course of rendering professional care or treatment of the child; OR

IF the health care provider who is highly qualified by experience in the field of child abuse and neglect, as evidenced by special training or credentialing, renders a second opinion at the request of the department or any law enforcement agency, whether or not the health care provider has examined the child, rendered care or treatment, or made the report of harm; THEN

The health care provider shall not be liable in any civil or criminal action that is based solely upon:

(A) The health care provider's decision to report what the provider believed to be harm;

(B) The health care provider's belief that reporting the harm was required by law;

(C) The fact that a report of harm was made; or

(D) The fact that an opinion as described in this subdivision (a)(1) was requested and provided.

(2) For the purposes of this subsection (a), by providing a second opinion, a report, information or records at the request of the department or any law enforcement agency the health care provider has satisfied all requirements to make a report of harm as required by §§ 37-1-403 and 37-1-605.

(3) As used in this subsection (a), "health care provider" means any physician, osteopathic physician, medical examiner, chiropractor, nurse, hospital personnel, mental health professional or other health care professional.

(4) Nothing in this subsection (a) shall be construed to confer any immunity upon a health care provider for a criminal or civil action arising out of the treatment of the child about whom the report of harm was made.

(5)

(A) IF absolute immunity is not conferred upon a person pursuant to subdivision (a)(1); AND

IF, acting in good faith, the person makes a report of harm, as required by § 37-1-403; THEN

The person shall not be liable in any civil or criminal action that is based solely upon:

(i) The person's decision to report what the person believed to be harm;

(ii) The person's belief that reporting the harm was required by law; or

(iii) The fact that a report of harm was made.

(B) Because of the overriding public policy to encourage all persons to report the neglect of or harm or abuse to children, any person upon whom good faith immunity is conferred pursuant to this subdivision (a)(5) shall be presumed to have acted in good faith in making a report of harm.

(6) No immunity conferred pursuant to this subsection (a) shall attach if the person reporting the harm perpetrated or inflicted the abuse or caused the neglect.

(7) A person furnishing a report, information or records as required, requested, or authorized under this part shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by this subsection (a) upon the person for making the report of harm.

(8) If the person furnishing a report, information or records during the normal course of the person's duties as required or authorized or requested under this part is different from the person originally reporting the harm, then the person furnishing the report, information or records shall have the same immunity and the same scope of immunity with respect to testimony the person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by this subsection (a) upon the person who made the original report of harm.

(b) Any person reporting under this part shall have a civil cause of action against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

37-1-412. Violation of duty to report — Power of juvenile court — Penalty.

(a)

(1) Any person who knowingly fails to make a report required by § 37-1-403 commits an offense.

(2)

(A) A violation of subdivision (a)(1) is a Class A misdemeanor.

(B) A second or subsequent violation of subdivision (a)(1) is a Class E felony.

(3) Any person who intentionally fails to make a report required by § 37-1-403 commits a Class E felony.

(b)

(1) A juvenile court having reasonable cause to believe that a person is guilty of violating this section may have the person brought before the court either by summons or by warrant. If the defendant pleads not guilty, the juvenile court judge shall bind the defendant over to the grand jury.

(2) If the defendant pleads guilty to a first offense under subdivision (a)(1) and waives, in writing, indictment, presentment, grand jury investigation, and trial by jury, the juvenile court judge shall sentence the defendant with a fine not to exceed two thousand five hundred dollars ($2,500).

37-1-602. Part definitions — Harm to child's health or welfare.

(a) For purposes of this part and §§ 8-7-109, 37-1-152, 37-1-403, 37-1-406, 37-1-413 and 49-7-117, unless the context otherwise requires:

(1) "Child care agency" is as defined in §§ 71-3-501 and 37-5-501;

(2) "Child protection team" means the investigation team created by § 37-1-607;

(3)

(A) "Child sexual abuse" means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape under § 39-2-603 [repealed];

(ii) Aggravated sexual battery under § 39-2-606 [repealed];

(iii) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(iv) Begetting child on wife's sister under § 39-4-307 [repealed];

(v) Crimes against nature under § 39-2-612 [repealed];

(vi) Incest under § 39-4-306 [repealed];

(vii) Promotion of performance including sexual conduct by minor under § 39-6-1138 [repealed];

(viii) Rape under § 39-2-604 [repealed];

(ix) Sexual battery under § 39-2-607 [repealed]; or

(x) Use of minor for obscene purposes under § 39-6-1137 [repealed];

(B) "Child sexual abuse" also means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape under § 39-13-502;

(ii) Aggravated sexual battery under § 39-13-504;

(iii) Aggravated sexual exploitation of a minor under § 39-17-1004;

(iv) Criminal attempt as provided in § 39-12-101 for any of the offenses in (a)(3)(B)(i)-(iii);

(v) Especially aggravated sexual exploitation of a minor under § 39-17-1005;

(vi) Incest under § 39-15-302;

(vii) Rape under § 39-13-503;

(viii) Sexual battery under § 39-13-505; or

(ix) Sexual exploitation of a minor under § 39-17-1003;

(C) "Child sexual abuse" also means one (1) or more of the following acts:

(i) Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;

(ii) Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;

(iii) Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

(iv) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:

(a) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

(b) Acts intended for a valid medical purpose;

(v) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

(vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

(a) Solicit for or engage in prostitution; or

(b) Engage in an act prohibited by § 39-17-1003;

(vii) The commission of any act towards the child prohibited by § 39-13-309; and

(D) For the purposes of the reporting, investigation, and treatment provisions of §§ 37-1-603 — 37-1-615 "child sexual abuse" also means the commission of any act specified in subdivisions (a)(3)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child;

(4) "Department" means the department of children's services;

(5) "Guardian ad litem" means a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, who shall be a party to any judicial proceeding as a representative of the child, and who shall serve until discharged by the court;

(6) “Institutional child sexual abuse” means situations of known or suspected child sexual abuse in which the person allegedly perpetrating the child sexual abuse is an employee of a public or private child care agency, public or private school, or any other person responsible for the child's care;

(7) “Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture; and

(8) “Other person responsible for a child's care or welfare” includes, but is not limited to, the child's legal guardian, legal custodian, or foster parent; an employee of a public or private child care agency, public or private school; or any other person legally responsible for the child's welfare in a residential setting.

(b) Harm to a child's health or welfare can occur when the parent or other person responsible for the child's welfare:

(1) Commits, or allows to be committed, child sexual abuse as defined in subdivisions (a)(3)(A)-(C); or

(2) Exploits a child under eighteen (18) years of age, or allows such child to be exploited, as provided in §§ 39-17-1003 — 39-17-1005.

37-1-605. Reports of known or suspected child sexual abuse — Investigations — Notification to parents of abuse on school grounds or while under school supervision — Confidentiality of records.

(a) Any person including, but not limited to, any:

(1) Physician, osteopathic physician, medical examiner, chiropractor, nurse or hospital personnel engaged in the admission, examination, care or treatment of persons;

(2) Health or mental health professional other than one listed in subdivision (1);

(3) Practitioner who relies solely on spiritual means for healing;

(4) School teacher or other school official or personnel;

(5) Judge of any court of the state;

(6) Social worker, day care center worker, or other professional child care, foster care, residential or institutional worker;

(7) Law enforcement officer;

(8) Authority figure at a community facility, including any facility used for recreation or social assemblies, for educational, religious, social, health, or welfare purposes, including, but not limited to, facilities operated by schools, the boy or girl scouts, the YMCA or YWCA, the boys and girls club, or church or religious organizations; or

(9) Neighbor, relative, friend or any other person;

who knows or has reasonable cause to suspect that a child has been sexually abused shall report such knowledge or suspicion to the department in the manner prescribed in subsection (b).

(b)

(1) Each report of known or suspected child sexual abuse pursuant to this section shall be made immediately to the local office of the department responsible for the investigation of reports made pursuant to this section or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides. Each report of known or suspected child sexual abuse occurring in a facility licensed by the department of mental health and substance abuse services, as defined in § 33-2-403, or any hospital, shall also be made to the local law enforcement agency in the jurisdiction where such offense occurred. In addition to those procedures provided by this part, § 37-1-405 shall also apply to all cases reported hereunder.

(2) If a law enforcement official or judge becomes aware of known or suspected child sexual abuse, through personal knowledge, receipt of a report or otherwise, such information shall be reported to the department immediately and the child protective team shall be notified to investigate the report for the protection of the child in accordance with this part. Further criminal investigation by such official shall be appropriately conducted.

(3) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to this section.

(c) Any person required to report or investigate cases of suspected child sexual abuse who has reasonable cause to suspect that a child died as a result of child sexual abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-612.

(d)

(1) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends such school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to this section and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report pursuant to this section has been made and shall provide other information relevant to the future well-being of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department of children's services; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

(2) Once notice is given pursuant to subdivision (d)(1), the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure, and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this subdivision (d)(2) shall not include records of other agencies or departments.

(3) For purposes of this subsection (d), "school" means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school.

37-1-613. Immunity from civil or criminal liability.

Any person making a report of child sexual abuse shall be afforded the same immunity and shall have the same remedies as provided by § 37-1-410 for other persons reporting harm to a child. Any other person, official or institution participating in good faith in any act authorized or required by this part shall be immune from any civil or criminal liability that might otherwise result by reason of such action.

37-1-614. Evidentiary privileges inapplicable in child sexual abuse cases.

The privileged quality of communication between husband and wife and between any professional person and the professional person's patient or client, and any other privileged communication, except that between attorney and client, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child sexual abuse and shall not constitute grounds for failure to report as required by this part, failure to cooperate with the department in its activities pursuant to this part, or failure to give evidence in any judicial proceeding relating to child sexual abuse.

37-1-615. Violations — Penalties.

(a)

(1) Any person required to report known or suspected child sexual abuse who knowingly fails to do so, or who knowingly prevents another person from doing so, commits an offense.

(2)

(A) A violation of subdivision (a)(1) is a Class A misdemeanor.

(B) A second or subsequent violation of subdivision (a)(1) is a Class E felony.

(3) Any person required to report known or suspected child sexual abuse who intentionally fails to do so, or who intentionally prevents another person from doing so, commits a Class E felony.

(b) Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records of any child sexual abuse case, except as provided in this part, commits a Class A misdemeanor.

37-10-303. Written consent required — Petition for waiver.

(a)

(1) No person shall perform an abortion on an unemancipated minor unless such person or such person's agent first obtains the written consent of one (1) parent or the legal guardian of the minor. The consent shall be signed. The person shall obtain some written documentation, other than the written consent itself, that purports to establish the relationship of the parent or guardian to the minor and the documentation, along with the signed consent, shall be retained by the person for a period of at least one (1) year. Failure of the person performing the abortion to obtain or retain the documentation and consent is a Class B misdemeanor, punishable only by a fine, unless the failure of the person performing the abortion to retain the required documentation was due to a bona fide, imminent medical emergency to the minor, in which case there is no violation.

(2) A person commits a Class A misdemeanor who impersonates the parent or legal guardian of an unemancipated minor for the purpose of circumventing the requirements of subdivision (a)(1).

(b) If neither a parent nor a legal guardian is available to the person performing the abortion or such person's agent, or the party from whom consent must be obtained pursuant to this section refuses to consent to the performance of an abortion, or the minor elects not to seek consent of the parent or legal guardian whose consent is required, then the minor may petition, on the minor's own behalf, or by next friend, the juvenile court of any county of this state for a waiver of the consent requirement of this section, pursuant to the procedures of § 37-10-304.

(c) If a criminal charge of incest is pending against a parent of such minor pursuant to § 39-15-302, the written consent of such parent, as provided for in subdivision (a)(1), is not required.

38-1-101. Reports to law enforcement officials of certain types of injuries — Immunity for reporting — Exception.

(a)

(1) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid to persons suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation, or where a wound or injury is reasonably believed to have resulted from exposure to a methamphetamine laboratory or a methamphetamine related fire, explosion, or chemical release, or appears to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110, shall report the same immediately to the chief of police, if the injured person is in or brought into or the injury occurred in an incorporated town or city, or to the sheriff if the injured person is in or brought into or the injury occurred in the county outside the corporate limits of any incorporated town or city, and shall also, in either event, report the same immediately to the district attorney general or a member of the district attorney general's staff of the judicial district in which the injured person is, or has been brought into, or the injury occurred. Such report shall state the name, residence, and employer of such person, if known, such person's whereabouts at the time the report is made, the place the injury occurred, and the character and extent of such injuries.

(2) No later than January 15 of each year, district attorneys general shall report the number of reports of a person who appeared to be suffering from or to have been the victim of female genital mutilation in violation of § 39-13-110 received pursuant to subdivision (a)(1) to the senate judiciary committee and the judiciary committee of the house of representatives.

(b) Injuries to minors that are required to be reported by § 37-1-403 are not required to be reported under this section.

(c)

(1) Where a person acts in good faith in making a report under subsection (a), that person shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity.

(2) There exists a rebuttable presumption that a person making a report under subsection (a) is doing so in good faith.

(d) For purposes of this part, "person" means any individual, firm, partnership, co-partnership, association, corporation, governmental subdivision or agency, or other organization or other legal entity, or any agent, servant, or combination of persons thereof.

(e)

(1) The reporting provisions in subsection (a) do not apply if the person seeking or receiving treatment:

(A) Is 18 years of age or older;

(B) Objects to the release of any identifying information to law enforcement officials; and

(C) Is a victim of a sexual assault offense or domestic abuse as defined in § 36-3-601.

(2) This exception shall not apply and the injuries shall be reported as provided in subsection (a) if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon.

(3) A hospital, healthcare provider or other person who is required to report under subsection (a) shall be immune from civil liability for not reporting if in good faith the hospital, healthcare provider or other person does not report the injury in order to comply with this subsection (e).

(4) If a person injured as provided in subsection (a) is first treated by an EMT, EMT-P, emergency medical or rescue worker, firefighter or other first responder, it shall not be the duty of the first responder to determine if the patient comes within the provisions of subdivision (e)(1). If the first responder transports the patient to a healthcare facility, the first responder's duty is to notify the treating physician or emergency room staff at the facility of the suspected cause of the patient's injury. If the patient is not transported to a healthcare facility, the first responder shall report the result of the call to the 911 center.

49-7-129. Short title — Notification of law enforcement agency of a medically unattended death or of a report alleging rape — Joint investigation — Penalty.

(a) This section shall be known and may be cited as the "Robert 'Robbie' Nottingham Campus Crime Scene Investigation Act of 2004."

(b) Regardless of whether a public or private institution of higher education has entered into a mutual assistance agreement with a law enforcement agency pursuant to § 49-7-118, the chief security officer or chief law enforcement officer of the institution shall immediately notify, unless otherwise provided by federal law, the local law enforcement agency with territorial jurisdiction over the institution, if the medically unattended death of a person occurs on the property of the institution, or if the officer is in receipt of a report from the victim alleging that any degree of rape has occurred on the property of the institution. The chief security officer or chief law enforcement officer shall designate one (1) or more persons who shall have the authority and duty to notify the appropriate law enforcement agency in the absence of the chief security officer or chief law enforcement officer.

(c) Upon notification pursuant to subsection (b), it shall be the duty of each law enforcement agency to participate in a joint investigation of the death or alleged rape reported pursuant to subsection (b). In the case of a medically unattended death, the local law enforcement agency shall lead the investigation. In the case of an alleged rape, the institution's law enforcement agency shall lead the investigation.

(d) After notifying the local law enforcement agency pursuant to subsection (b), the security officers or law enforcement officers and all other employees of the institution shall cooperate in every respect with the investigation conducted by the law enforcement agency.

(e) Any official of a public or private institution of higher education receiving a report from a victim of rape occurring on the property or in the vicinity of the institution shall refer the victim to a sexual assault program or other service on campus or in the community. Sexual assault programs shall report annually, by January 31, to the chief security or law enforcement officer of the institution of the number of requests for assistance received from victims who were raped on or in the vicinity of a public or private institution of higher education during the preceding calendar year.

(f) As used in this section, "local law enforcement agency" means:

(1) Within the territory of a municipality, the municipal police force;

(2) Within the territory of a county having a metropolitan form of government, the metropolitan police force; and

(3) Within the unincorporated territory of a county, the sheriff's office.

(g) A knowing violation of this section is a Class C misdemeanor.

49-7-2202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Institution of higher education" includes any college, community college or university, including the state colleges of applied technology, whether public or private, that is required to submit a copy of the statistics of certain criminal offenses to the secretary of education under 20 U.S.C. § 1070 et. seq.; and

(2) "Student housing" means all residence halls and sorority and fraternity residences owned or under the control of the institution of higher education.

49-7-2203. Reporting of crime statistics.

(a) Each institution of higher education shall report to the Tennessee bureau of investigation, on an annual basis, crime statistics for crimes occurring on the campus and in student housing, if applicable, of the institution for publication in an annual report on forms and in the format required by the bureau pursuant to this part. It is the duty of the director of the Tennessee bureau of investigation to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of the crime statistics. The rules so adopted and promulgated shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and shall have the force and effect of law.

(b) Each institution of higher education shall publish, in accordance with the rules, regulations, policies and procedures of the state publications committee, a report that shall be updated annually, and that shall include the crime statistics as reported under subsection (a) for the most recent three-year period. Crime rates shall also be included in the report. The crime rates reported shall be based on the numbers and categories of crimes reported under subsection (a) and the number of full-time equivalent undergraduate and graduate students and full-time equivalent employees at the institution of higher education. Upon request, the institution shall provide the report to every person who submits an application for admission to the institution and to each new employee at the time of employment. In its acknowledgment of receipt of the formal application of admission, the institution shall notify the applicant of the availability of the information. Upon request, the institution shall also provide the report to any student or employee of the institution. Institutions with more than one (1) campus shall provide the required information on a campus-by-campus basis.

(c) Upon the request of any applicant for admission or any new employee, each institution of higher education shall provide information regarding the institution's security policies and procedures. In its acknowledgment of receipt of an application for admission or in pre-admission materials, the institution shall notify the applicant of the availability of the information. Upon request, the institution shall also provide the information to any student or employee of the institution. The institution shall post public notices stating that the information described in this subsection (c) is available and explaining how it may be obtained.

Institutions with more than one (1) campus shall provide the information on a campus-by-campus basis. The information for the most recent school year shall include, but not be limited to, the following:

(1) The number of undergraduate and graduate students enrolled;

(2) The number of undergraduate and graduate students living in student housing;

(3) The total number of nonstudent employees working on the campus;

(4) The administrative office responsible for security on the campus;

(5) A description of the type and number of security personnel utilized by the institution, including a description of their training;

(6) The enforcement authority of security personnel, including their working relationship with state and local law enforcement agencies;

(7) Policy on reporting criminal incidents to state and local law enforcement agencies;

(8) Policy regarding access to institutional facilities and programs by students, employees, guests and other individuals;

(9) Procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to the reports;

(10) A statement of policy regarding the possession, use and sale of alcoholic beverages;

(11) A statement of policy regarding the possession, use and sale of illegal drugs;

(12) A statement of policy regarding the possession and use of weapons by security personnel and any other person;

(13) Any policy regarding students or employees with criminal records;

(14) Security considerations used in the maintenance of campus facilities, including landscaping, groundskeeping and outdoor lighting; and

(15) A description of the communication media used to inform the campus community about security matters as well as the frequency with which the information is usually provided.

(d) Institutions that maintain student housing facilities shall include in the information described in subsection (c) the following:

(1) Types of student housing available, such as on-campus, off-campus; single room, double, group; single sex, coed; undergraduate, graduate, married, or other types of student housing;

(2) Policies on housing assignments and requests by students for assignment changes;

(3) Policies concerning the identification and admission of visitors in student housing facilities;

(4) Measures to secure entrances to student housing facilities;

(5) Standard security features used to secure doors and windows in students' rooms;

(6) A description of the type and number of employees, including security personnel, assigned to the student housing facilities, which shall include a description of their security training;

(7) The type and frequency of programs designed to inform student housing residents about housing security and enforcement procedures;

(8) Policy and any special security procedures for housing students during low-occupancy periods such as holidays and vacation periods; and

(9) Policy on the housing of guests and others not assigned to the student housing or not regularly associated with the institution of higher education.

71-3-104. Eligibility for temporary assistance.

(a) A family shall be eligible for temporary assistance pursuant to this part if:

(1) A dependent child resides in this state with a caretaker relative in that family, or an individual who applies for temporary assistance is pregnant, or as otherwise defined by the department;

(2) The family meets income standards based upon the standard of need for a family based upon its size and income and based upon resource limits as determined by the department in its rules;

(3) The family members are engaged in work activities as set forth in subsection (g), except as exempted by this part or by rule of the department;

(4) The caretaker relative has agreed to and complies with a personal responsibility plan as developed by the department in accordance with subsection (h); and

(5) The family or individual of the family is otherwise eligible pursuant to federal or state laws or regulations.

(b)

(1) A caretaker relative who becomes ineligible for any reason other than a failure to comply with work requirements or to cooperate with child support obligations shall be eligible for transitional childcare assistance for a period specified by the department while the caretaker relative is employed, in school, or in employment training. Childcare assistance terminated due to failure to comply with work requirements shall be reinstated upon verification by the department that the work requirements were, in fact, being met immediately preceding such ineligibility. Childcare assistance shall be paid, on a sliding fee scale based upon the family's income for so long as federal funding or any related waiver is in effect.

(2) Food stamp assistance shall continue to be available to these families as prescribed by federal or state law or regulations.

(3)

(A) A family that becomes financially ineligible for temporary assistance due to an increase in a caretaker relative's earned income, but continues to meet all other eligibility criteria, including compliance with the program's work requirements, shall be eligible for transitional temporary assistance for no more than six (6) months.

(B) The amount of the transitional temporary assistance shall be based upon the family's income and household size.

(C) Receipt of transitional temporary assistance shall count toward the recipient's maximum time limit under subsection (d).

(D) The department is authorized to promulgate rules to effectuate this subdivision (b)(3) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Persons who are recipients of temporary assistance and who marry while receiving such assistance may disregard the new spouse in determining eligibility for three (3) months after the date of marriage.

(d)

(1) Except as provided in this part or as otherwise required by federal law, no family shall receive assistance if that family includes an adult who has received temporary assistance from this program or the program of any other state or territory for a total of sixty (60) months, whether or not consecutive, unless an exemption is granted pursuant to this part.

(2) As to a child who was not the head of a household or who was not married to the head of a household, the sixty (60) month time limit stated in subdivision (d)(1) shall not begin to run during the time that the child was a member of a family receiving assistance under this part.

(3) A family shall be eligible for temporary assistance beyond the sixty-month time limit stated in subdivision (d)(1) if:

(A) The family does not contain an adult;

(B) The caretaker relative is sixty-five (65) years of age or older;

(C) The caretaker relative is caring for a disabled or incapacitated child relative or disabled adult relative, based upon criteria set forth in the department's rules;

(D) The caretaker relative is disabled, based upon criteria set forth in the department's rules; or

(E) As otherwise required by federal and state laws or regulations.

(4) The exemptions in subdivision (d)(3) are subject to the limitations for the percentages of individuals allowed to receive temporary assistance beyond sixty (60) months.

(e)

(1) No payment of assistance shall be made for an individual who is not the head of a household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in the person's care, and who has not successfully completed a high school education or its equivalent, unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.

(2) No payment of assistance shall be made to an individual who is head of a household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) weeks of age in the person's care, and who has not successfully completed a high school education or its equivalent unless the individual participates in:

(A) Educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) Thirty (30) hours of countable work activities as delineated in subsection (g).

(f)

(1) Except as provided in subdivision (f)(2), if a person applying for assistance under this chapter is under eighteen (18) years of age, has never married, and is either pregnant or has the applicant's child in the applicant's care, the applicant is not eligible for assistance if:

(A) The applicant and the applicant's child or children do not live in a place maintained by the applicant's parent, legal guardian, or other adult relative as such person's own home or other suitable living arrangement as otherwise defined by rule of the department; and

(B) The department determines after investigation that the physical or emotional health or safety of the person applying for assistance or the dependent child or children would not be jeopardized if the applicant and the dependent child or children were required to live in one of the situations described in subdivision (f)(1)(A).

(2) Subdivision (f)(1) does not apply if:

(A) The person applying for assistance has no parent, legal guardian or other adult relative whose whereabouts are known;

(B) No parent, legal guardian or other adult relative of the person applying for assistance allows the person to live in the home of that parent, legal guardian or other adult relative as determined by the department's verification; or

(C) The department otherwise determines that there is good cause not to apply subdivision (f)(1).

(g) All family members who are not otherwise exempt pursuant to rules of the department and who receive temporary assistance pursuant to this part shall engage in work, training or educational activities. The department shall define the types of activities by rule. These activities may include, but shall not be limited to, the following:

(1) Employment;

(2) Work experience activities;

(3) On-the-job training;

(4) Job search and job readiness assistance;

(5) Community service programs;

(6) Vocational educational training;

(7) Job skills and educational training related directly to employment;

(8) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; and

(9) Satisfactory attendance at a secondary school, in the case of a recipient who:

(A) Has not completed secondary school; and

(B) Is a dependent child or a head of a household who is nineteen (19) years of age or younger.

(h)

(1) As a condition of eligibility, an applicant for or a recipient of temporary assistance must agree to a personal responsibility plan developed by the department in direct consultation with the applicant or recipient. For all applicants or recipients who are not exempt from the work requirements established by this part, an individualized career plan shall be developed establishing goal-oriented work activities designed to provide the applicant or recipient with an opportunity to move toward self-sufficiency. Supportive services determined essential to successful engagement in the work activities shall be provided. At least once each twelve (12) months throughout the period of continuous temporary assistance provided pursuant to this part, the department shall monitor and evaluate the personal responsibility plan to promote the recipient's success in gaining self-sufficiency.

(2)

(A) The personal responsibility plan shall require participation in personal responsibility activities as set forth in subsection (g). The department may provide either a parent education training class for parents or caretakers of children in pre-kindergarten through third grade (pre-K-3) or a program of volunteer service in school in which a parent or caretaker relative who is a recipient of temporary assistance under this part may agree to participate.

(B) The personal responsibility plan shall also require the parent or other caretaker relative, regardless of age or disabling status, to enter a plan that requires, but is not limited to, the following:

(i) The children in the family attend school;

(ii) The children in the family receive immunizations and health checks; and

(iii) The parent or caretaker relative cooperate in the establishment and enforcement of child support, including, but not limited to, the naming of the father of a child for purposes of paternity establishment, unless good cause not to cooperate exists, as defined by the department.

(C) The personal responsibility plan shall include requirements, if the need is identified relative to the child, that:

(i) The parent or a suitable adult or guardian shall attend two (2) or more conferences within a year with the child's teacher to review the child's status in school;

(ii) Attend at least eight (8) hours of parenting classes; or

(iii) The parent shall participate in such support services that the child may need as determined by the department to overcome any school, family, or other barriers that may interfere with the child's and the family's ability to be successful.

(D)

(i) Unless exempt, refusal or failure to engage in full-time employment, part-time employment or other training or other work preparation activities as set forth in subsection (g), without good cause, or the failure to cooperate in the

establishment or enforcement of child support without good cause, shall result in denial of eligibility for, or termination of, temporary assistance for the entire family unit.

(ii) Failure to comply with the personal responsibility plan as required under subdivisions (h)(2)(B)(i) and (ii), without good cause, shall result in a percentage reduction with regard to the temporary assistance payment in the amount of twenty percent (20%) until such time as compliance occurs.

(E) The personal responsibility plan may provide transportation assistance, if needed to participate in required activities; provided, that the department shall first utilize available community transportation resources before providing such assistance from department funds. The department shall provide childcare services for those individuals who are receiving benefits, participating in work activities delineated in subsection (g), and not exempt from work activities pursuant to this part.

(3) The work requirements shall be excused for:

(A) A parent or caretaker relative who proves to the satisfaction of the department the existence of the person's temporary incapacity or permanent disability;

(B) A parent or caretaker relative who proves to the satisfaction of the department that the person must provide personal care for a disabled relative child or adult relative living in the home;

(C) A single parent with a child under sixteen (16) weeks of age;

(D) A person who is sixty-five (65) years of age or older;

(E) A nonparental caretaker relative who chooses not to be included in the assistance group; and

(F) Other exemptions that may be required by federal law or regulation, as well as other exemptions that may be established by rule of the department in order to promote the purposes of this part.

(4) If, without good cause, a recipient of temporary assistance fails to comply with a child support or work plan requirement imposed by this part or prescribed within the personal responsibility plan, then the family shall be subject to appropriate sanction by the department, which may include termination of assistance for a period to be determined by the department.

(i) The maximum payment standard for a family shall not be increased for a child who is born to a caretaker relative of a temporary assistance unit who, as determined by the statement of a physician, becomes pregnant while receiving temporary assistance, or as otherwise defined by regulation of the department; provided, that if the family loses eligibility for any reason other than a failure to cooperate with the department or a failure to comply with the personal responsibility plan and if the family subsequently becomes eligible again for temporary assistance, then the department shall base the maximum payment standard on the actual size of the family unit including such child.

(j) No payment of temporary assistance shall be made to an individual for ten (10) years from the date of conviction, guilty plea or plea of nolo contendere of that individual in a federal or state court for having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states under the temporary assistance program under this part, TennCare or any program of medical services under Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.), or under the supplemental security income program under Title XVI of the Social Security Act (42 U.S.C. § 1381 et seq.).

(k)

(1) No payment of assistance shall be made to an individual who is fleeing to avoid prosecution or custody or confinement after conviction under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which an individual flees, or that, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state, or who is violating a condition of probation or parole imposed by federal or state law.

(2)

(A) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted on or before June 30, 2011, under federal or state law of a felony involving possession, use or distribution of a controlled substance shall be exempt

from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for families first program benefits for such convictions, if such person, as determined by the department

(i)

(a) Is currently participating in a substance abuse treatment program approved by the department of human services;

(b) Is currently enrolled in a substance abuse treatment program approved by the department of human services, but is subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity;

(c) Has satisfactorily completed a substance abuse treatment program approved by the department of human services; or

(d) Is determined by a treatment provider licensed by the department of mental health and substance abuse services not to need substance abuse treatment according to TennCare guidelines; and

(ii) Is complying with, or has already complied with, all obligations imposed by the criminal court, including any substance abuse treatment obligations.

(B) Eligibility based upon the factors in subdivision (k)(2)(A) must be based upon documentary or other evidence satisfactory to the department, and the applicant must meet all other factors of program eligibility, including, specifically, being accountable for the requirements of the personal responsibility plan required by this part.

(C) Notwithstanding subdivision (k)(2)(A) or (k)(2)(B) to the contrary, no person convicted of a Class A felony for violating a provision of title 39, chapter 17, part 4 shall be eligible for the exemptions provided by subdivision (k)(2)(A) or (k)(2)(B).

(D) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted on or after July 1, 2011, under federal or state law of a felony involving possession, use or distribution of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for families first program benefits for such convictions, if such person meets the following requirements:

(i) Requirements contained in subdivision (k)(2)(A) or (k)(2)(B) and (C);

(ii) If treatment was prescribed according to the requirements in subdivision (k)(2)(A) or (k)(2)(B), successful completion of a substance abuse program must occur within three (3) attempts. If such person does not complete the originally prescribed treatment program within three (3) attempts, the individual shall be ineligible for a period of three (3) years.

(E) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted of a second drug felony under federal or state law of a felony involving possession, use or distribution of a controlled substance on or after July 1, 2011, shall not be eligible for families first program benefits for a period of three (3) years from the date of conviction.

(l) No payment of assistance pursuant to this part shall be made for an illegal alien in a family.

71-6-102. Part definitions.

As used in this part, unless the context otherwise requires:

(1)

(A) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will

in accordance with the Tennessee Right to Natural Death Act, compiled in title 32, chapter 11, and if the provision of such medical care would conflict with the terms of such living will;

(B) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:

(i) The adult is unable to protect or care for himself or herself without assistance or supervision; and

(ii) The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;

(2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter;

(3) "Advanced age" means sixty (60) years of age or older;

(4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

(5) "Caretaker":

(A) Means an individual or institution who has assumed the duty to provide for the care of the adult by contract or agreement;

(B) Includes a parent, spouse, adult child or other relative, both biological or by marriage, who:

(i) Resides with or in the same building with or regularly visits the adult;

(ii) Knows or reasonably should know of the adult's mental or physical dysfunction or advanced age; and

(iii) Knows or reasonably should know that the adult is unable to adequately provide for the adult's own care; and

(C) Does not mean a financial institution as a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

(6) "Commissioner" means the commissioner of human services;

(7) "Department" means the department of human services;

(8) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated;

(10) "Investigation" includes, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(11) "Protective services" means services undertaken by the department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition

of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home;

(12) "Relative" means spouse; child, including stepchild, adopted child or foster child; parents, including stepparents, adoptive parents or foster parents; siblings of the whole or half-blood; step-siblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces and nephews; and

(13) "Sexual abuse" occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an adult, as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.

71-6-103. Rules and regulations — Reports of abuse or neglect — Investigation — Providing protective services — Consent of adult — Duties of other agencies.

(a) The commissioner has the discretion to adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this part insofar as such action is reasonably calculated to serve the public interest.

(b)

(1) Any person, including, but not limited to, a physician, nurse, social worker, department personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with this part. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death. However, unless the report indicates that there are other adults in the same or similar situation and that an investigation and provision of protective services are necessary to prevent their possible abuse, neglect or exploitation, it shall not be necessary for the department to make an investigation of the circumstances surrounding the death; provided, that the appropriate law-enforcement agency is notified.

(2) If a hospital, clinic, school, or any other organization or agency responsible for the care of adults has a specific procedure, approved by the director of adult protective services for the department, or the director's designee, for the protection of adults who are victims of abuse, neglect, or exploitation, any member of its staff whose duty to report under this part arises from the performance of the staff member's services as a member of the staff of the organization may, at the staff member's option, fulfill that duty by reporting instead to the person in charge of the organization or the organization head's designee who shall make the report in accordance with this chapter.

(c) An oral or written report shall be made immediately to the department upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide the following information, if known: the name and address of the adult, or of any other person responsible for the adult's care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation. Each report of known or suspected abuse of an adult involving a sexual offense that is a violation of §§ 39-13-501 — 39-13-506 that occurs in a facility licensed by the department of mental health and substance abuse services as defined in § 33-2-402, or any hospital shall also be made to the local law enforcement agency in the jurisdiction where such offense occurred.

(d) Upon receipt of the report, the department shall take the following action as soon as practical:

(1) Notify the appropriate law enforcement agency in all cases in which the report involves abuse, neglect, or exploitation of the adult by another person or persons;

(2) Notify the appropriate licensing authority if the report concerns an adult who is a resident of, or at the time of any alleged harm is receiving services from, a facility that is required by law to be licensed or the person alleged to have caused or permitted the harm is licensed under title 63. The commissioner of health, upon becoming aware through personal knowledge, receipt of a report or otherwise, of confirmed exploitation, abuse, or neglect of a nursing home resident, shall report such instances to the Tennessee bureau of investigation for a determination by the bureau as to whether the circumstances reported constitute abuse of the medicaid program or other criminal violation;

(3) Initiate an investigation of the complaint;

(4) Make a written report of the initial findings together with a recommendation for further action, if indicated; and

(5) After completing the evaluation, the department shall notify the person making the report of its determination.

(e) Any representative of the department may enter any health facility or health service licensed by the state at any reasonable time to carry out its responsibilities under this part.

(f) Any representative of the department may, with consent of the adult or caretaker, enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out this part. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the department to proceed with the investigation.

(g) If a determination has been made that protective services are necessary when indicated by the investigation, the department shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(h) In the event the adult elects to accept the protective services to be provided by the department, the caretaker shall not interfere with the department when rendering such services.

(i) If the adult does not consent to the receipt of protective services, or if the adult withdraws consent, the services shall be terminated, unless the department determines that the adult lacks capacity to consent, in which case it may seek court authorization to provide protective services.

(j)

(1) Any representative of the department actively involved in the conduct of an abuse, neglect, or exploitation investigation under this part shall be allowed access to the mental and physical health records of the adult that are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.

(2) To complete the investigation required by this part, any authorized representative of the department actively involved in the conduct of an investigation pursuant to this part shall be allowed access to any law enforcement records or personnel records, not otherwise specifically protected by statute, of any person who is:

(A) A caretaker of the adult; or

(B) The alleged perpetrator of abuse, neglect or exploitation of the adult, who is the subject of the investigation.

(3)

(A) If refused any information pursuant to subdivisions (j)(1) and (2), any information from any records necessary for conducting investigations pursuant to this part may be obtained upon motion by the department to the circuit, chancery or general sessions court of the county where such records are located, or in the court in which any proceeding concerning the adult may have been initiated or in the court in the county in which the investigation is being conducted.

(B) The order on the department's motion may be entered ex parte upon a showing by the department of an immediate need for such information.

(C) The court may enter such orders as may be necessary to ensure that the information sought is maintained pending any hearing on the motion, and to protect the information obtained from further disclosure if the information is made available to the department pursuant to the court's order.

(4)

(A) The department may be allowed access to financial records that are contained in any financial institution, as defined by § 45-10-102(3):

(i) Regarding:

(a) The person who is the subject of the investigation;

(b) Any caretaker of such person; and

(c) Any alleged perpetrator of abuse, neglect or exploitation of such person;

(ii) By the issuance of an administrative subpoena in the name of the commissioner or an authorized representative of the commissioner that is:

(a) Directed to the financial institution; and

(b) Complies with §§ 45-10-106 and 45-10-107; or

(iii) By application, as otherwise required pursuant to § 45-10-117, to the circuit or chancery court in the county in which the financial institution is located, or in the court in which any proceeding concerning the adult may have been initiated or in which the investigation is being conducted, for the issuance of a judicial subpoena that complies with the requirements of § 45-10-107; provided, that the department shall not be required to post a bond pursuant to § 45-10-107(a)(4).

(B) Nothing in this subdivision (j)(4) shall be construed to supersede the provision of financial records pursuant to the permissible acts allowed pursuant to § 45-10-103.

(5) Any records received by the department, the confidentiality of which is protected by any other statute or regulation, shall be maintained as confidential pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to its authority pursuant to this part or title 33 or 34.

(k)

(1) If, as a result of its investigation, the department determines that an adult who is a resident or patient of a facility owned or operated by an administrative department of the state is in need of protective services, and the facility is unable or unwilling to take action to protect the resident or patient, the department shall make a report of its investigation, along with any recommendations for needed services to the commissioner of the department having responsibility for the facility. It shall then be the responsibility of the commissioner for that department and not the department of human services to take such steps as may be necessary to protect the adult from abuse, neglect, or exploitation and, in such cases, the affected administrative department of the state shall have standing to petition the court.

(2)

(A) Notwithstanding subdivision (k)(1) or any other provision of this part to the contrary, the department of human services shall not be required to investigate and the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, or their successor agencies, shall not be required to report to the department of human services any allegations of abuse, neglect or exploitation involving any person that arise from conduct occurring in any institutions operated directly by either the department of mental health and substance abuse services or the department of intellectual and developmental disabilities.

(B) Allegations of abuse, neglect or exploitation of individuals occurring in the circumstances described in subdivision (k)(2)(A) shall be investigated, respectively, by investigators of the department of mental health and substance abuse services and the department of intellectual and developmental disabilities, or their successor agencies, who have been assigned to investigate the allegations.

(l) In the event the department, or a law enforcement agency, in the course of its investigation, is unable to determine to its satisfaction that sufficient information is available to determine whether an adult is in imminent danger or lacks the capacity to consent to protective services, an order may be issued, upon a showing of probable cause that an adult lacks capacity to consent to protective services and is being abused, neglected, or exploited, to require the adult to be examined by a physician, a psychologist in consultation with a physician or a psychiatrist in order that such determination can be made. An order for examination may be issued ex parte upon affidavit or sworn testimony if the court finds that there is cause to believe that the adult may be in imminent danger and that delay for a hearing would be likely to substantially increase the adult's likelihood of irreparable physical or mental harm, or both, and/or the cessation of life.

71-6-121. Posting of contact information on adult protective service.

(a) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all senior centers, all community centers and all pharmacies shall post the following in the main public entrance:

(1) Contact information including the statewide toll-free number of the division of adult protective services, and the number for the local district attorney general's office; and

(2) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect, and exploitation.

(b) The information listed in subsection (a) shall be posted on a sign no smaller than eleven inches (11″) in width and seventeen inches (17″) in height.

(c) All nursing homes, assisted living facilities and any other residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number.

(d) Any licensed nursing home that complies with the requirements of § 68-11-254 shall be exempt from the requirements of subsections (a) and (b).

(e)

(1) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all community centers, and all pharmacies shall post in the main public entrance, on a sign no smaller than eight and one-half inches (8 ½″) in width and eleven inches (11″) in height, a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, or any other hotline that may be determined by the departments of health and commerce and insurance and communicated to health care providers subject to this section pursuant to subdivision (e)(2), with that number printed in boldface type, for immediate assistance.

(2) The departments of health and commerce and insurance, through the various regulatory and licensure boards with oversight of health care providers, shall include a statement notifying providers of the requirements of subdivision (e)(1) in the newsletters or other routine correspondences of such boards and shall post a copy of such statement on the departments' websites. The statement shall include a contact telephone number for providers to request that a copy of the statement be mailed to them. Upon initial licensure, the various boards shall also provide initial licensees with the statement along with instructions for compliance with subdivision (e)(1).

(f) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all community centers, and all pharmacies shall post on a sign no smaller than eight and one-half inches (8 ½″) in width and eleven inches (11″) in height in the main public entrance a statement that a teen involved in a relationship that includes dating violence may call a national toll-free hotline, with that number printed in boldface type, for immediate assistance.

(g) Notwithstanding the provisions of subsections (a)-(f) regarding the size of the posters, physicians' offices, health care facilities, community centers and pharmacies are authorized to incorporate all of the information required in subsections (a)-(f) in a single poster at least eight and one-half inches (8 ½″) in width and fourteen inches (14″) in height that shall be posted in the main public entrance.

(h) The departments of health and commerce and insurance, through the various regulatory and licensure boards with oversight of health care providers, shall include a statement notifying providers of the requirements of subsections (a)-(g) in the newsletters or other routine correspondences of those boards and shall post a copy of the statement on the departments' websites. The statement shall include a contact telephone number for providers to request that a copy of the statement be mailed to them. Upon initial licensure, the various boards shall also provide initial licensees with the statement along with instructions for compliance with subsections (a)-(g).

71-6-124. Order of protection for adult who has been subjected to abuse, neglect, or exploitation.

(a)

(1)

(A) Any relative, conservator, or agent of the Tennessee commission on aging and disability; designated agency or assign of the relative, conservator, or commission; or attorney ad litem having personal knowledge that an adult has been the subject of a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, or that such adult is threatened with or placed in fear of a violation of any of those sections, may seek relief for the adult pursuant to this section by filing a sworn petition with any court having jurisdiction under this part alleging that the

respondent has violated or threatens to violate § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, regardless of the existence of any other remedy at law.

(B) The petition must allege facts, based upon personal knowledge of the petitioner, that the adult either lacks the capacity to consent or that appearing in court to petition on the adult's own behalf would pose an undue burden on the adult.

(C) An elderly or vulnerable adult, who has been the subject of a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, or has been threatened with or placed in fear of a violation of any of those sections, may seek relief pursuant to this section by filing a sworn petition with any court having jurisdiction under this part alleging that the respondent has violated or threatens to violate § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, regardless of the existence of any other remedy at law.

(D)

(i) Notwithstanding subdivisions (a)(1)(A) and (C), and for good cause shown, the court may issue an ex parte order of protection pursuant to this section upon a sworn petition filed by a law enforcement officer responding to an incident involving an elderly or vulnerable adult victim who asserts in the petition reasonable grounds to believe that the adult is in immediate and present danger of abuse, neglect, financial exploitation, or sexual exploitation as defined in § 39-15-501, and that the adult either has consented to the filing or lacks the capacity to consent; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection is considered the petitioner for purposes of this section. The court may waive any court costs, taxes, or fees for obtaining an order of protection upon a finding that the individual for whose benefit an order of protection has been sought is indigent. If a third party seeking an order of protection represents to the court under oath that the individual for whose benefit the order of protection has been sought is indigent, the court will presume that the individual for whose benefit the order of protection has been sought is indigent absent clear and convincing evidence to the contrary.

(ii) The law enforcement officer may seek on behalf of the adult the ex parte order regardless of the time of day and regardless of whether an arrest has been made.

(iii) If an ex parte order is issued pursuant to this section outside of the court's normal operating hours, the law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as practicable after issuance, but no later than two (2) business days after issuance; and

(iv) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

(E) Venue for a petition for an order of protection, and all other matters relating to orders of protection, is in the county where the respondent resides or the county in which the violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512 occurred or is threatened to occur. If the respondent is not a resident of this state, the petition may be filed in the county where the adult resides.

(2)

(A) Pursuant to subdivision (a)(1)(A), the court may enter an immediate ex parte order of protection against the respondent if the petition alleges upon personal knowledge of the petitioner, and the court finds in its ex parte order, that the adult lacks capacity to consent or that the adult lacks the ability to be present to petition on their own behalf and is in immediate danger of abuse, neglect, financial exploitation, or sexual exploitation.

(B) Pursuant to subdivision (a)(1)(C), the court may enter an immediate ex parte order of protection against the respondent if the court finds in its ex parte order that the elderly adult is in immediate danger of abuse, neglect, financial exploitation, or sexual exploitation.

(C) Pursuant to subdivision (a)(1)(D), the court may enter an immediate ex parte order of protection against the respondent if the court finds in its ex parte order that the elderly adult is in immediate and present danger of abuse, neglect, financial exploitation, or sexual exploitation, and that the adult has either consented to the filing or lacks the capacity to consent.

(3) The petition and any ex parte order issued pursuant to this section shall be personally served upon the respondent, and if filed pursuant to subdivision (a)(1)(A) or (a)(1)(D), upon the adult. If the respondent is not a resident of this state, the ex parte order must be served pursuant to §§ 20-2-215 and 20-2-216.

(4) The clerk of the court shall send written notice of the filing of the petition and copies of the petition and the ex parte order of protection against the respondent, if any, to the adult protective services unit of the department of human services in the county where the petition is filed. The department is not responsible for court costs, costs of representation, or costs for a guardian ad litem related to a petition for an ex parte order of protection, or any ex parte order of protection issued pursuant to this section. The department has a right to intervene in the proceeding, but is not otherwise required to initiate any legal action as a result of such notice. The department may, at any time, file a petition pursuant to § 71-6-107 if the department determines the adult who is the subject of a petition for an order of protection is in need of protective services.

(5)

(A) Within fifteen (15) days of service of an ex parte order of protection against the respondent, a hearing must be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proven the allegations made pursuant to subdivision (a)(1)(A), (a)(1)(C), or (a)(1)(D), by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the adult, the respondent, or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year.

(B) Any ex parte order of protection shall be in effect until the time of the hearing and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order continues in effect until the entry of any subsequent order of protection, proceedings under title 34, chapters 1-3, are concluded, or the order of protection is dissolved. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegations made pursuant to subdivision (a)(1)(A), (a)(1)(C), or (a)(1)(D) by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

(C) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent, and if filed pursuant to subdivision (a)(1)(A) or (a)(1)(D), upon the adult at least three (3) days prior to such hearing. Such notice shall advise the respondent and the adult that each may be represented by counsel. The court may appoint a guardian ad litem under § 34-1-107.

(D) Within the time the order of protection is in effect, any court with jurisdiction under this part may modify the order of protection, either upon the court's own motion or upon motion of the adult, the respondent, or the petitioner.

(b) An order of protection granted pursuant to this section may:

(1) Order the respondent to refrain from committing a violation of this part or title 39, chapter 15, part 5 against an adult;

(2) Order the respondent to refrain from threatening to misappropriate or further misappropriating any moneys, state or federal benefits, retirement funds, or any other personal or real property belonging to the adult;

(3) Order the return to the adult, the adult's caretaker, conservator, or other fiduciary any moneys, state or federal benefits, retirement funds, or any other personal or real property belonging to the adult obtained by the respondent as a result of exploitation of the adult or as a result of any other misappropriation of such funds or property of the adult by the respondent. The court may enter judgment against the respondent for the repayment or return to the adult or the adult's caretaker, conservator, or other fiduciary of any moneys, government benefits, retirement funds, or any other personal or real property belonging to the adult that are under the control of or that have been obtained by the respondent as a result of exploitation or misappropriation from the adult. This subdivision (b)(3) does not preclude an action under § 71-6-120. The court may, if the amount in question exceeds ten thousand dollars ($10,000), require any caretaker or custodian of funds appointed under this section to post a bond as required by § 34-1-105;

(4) Enjoin the respondent from providing care for an adult, or working in any situation involving the care of an adult, whether such action occurs in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility, or arrangement serving adults is licensed to provide care for adults;

(5) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly; and

(6) Subject to the limitations otherwise stated in this section, grant any other relief deemed necessary by the court to protect an adult.

(c) All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year. The court may modify its order at any time upon subsequent motion filed by any party together with an affidavit showing a change in circumstances sufficient to

warrant the modification. The petitioner, respondent, adult, or the court on its own motion may commence a proceeding under title 34, chapters 1-3 to determine whether a fiduciary or conservator should be appointed, if any party alleges that the conditions giving rise to the order of protection continue or may continue beyond the one (1) year.

(d)

(1) If the respondent and the adult have been served with a copy of the petition filed pursuant to subdivision (a)(1)(A) or (a)(1)(D) and notice of hearing, the order of protection is effective when the order is entered. For purposes of this subdivision (d)(1), an order is considered entered once a hearing is conducted and such order is signed by:

(A) The judge and all parties or counsel;

(B) The judge and one (1) party or counsel and the order contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(C) The judge and the order contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(2) Service upon a party or counsel must be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service must so state. Service by mail is complete upon mailing.

(3) If the respondent and the adult have been served with a copy of the petition filed pursuant to subdivision (a)(1)(A) or (a)(1)(D) and notice of hearing, an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered, regardless of whether the respondent is present at the hearing.

(4) A copy of any order of protection and any subsequent modifications or dismissal must be issued by the clerk of the court to the petitioner, the respondent, and the local law enforcement agencies having jurisdiction in the area where the adult resides. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit it to the national crime information center.

(5) Upon violation of an order of protection entered pursuant to this section, a court may order any appropriate punishment or relief as provided for in § 36-3-610.

(e)

(1) It is an offense to knowingly violate an order of protection issued pursuant to this section. A law enforcement officer may arrest a respondent who is the subject of an order of protection issued pursuant to this section with or without warrant.

(2) In order to constitute a violation of this section:

(A) The person must have received notice of the request for an order of protection;

(B) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(C) The court must have made specific findings of fact in the order of protection that the person committed a violation of this part.

(3) Any law enforcement officer shall arrest the respondent without a warrant if:

(A) The officer has proper jurisdiction over the area in which the violation occurred;

(B) The officer has reasonable cause to believe the respondent has violated or is in violation of an order of protection; and

(C) The officer has verified that an order of protection is in effect against the respondent. If necessary, the law enforcement officer may verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement department.

(4) Any person arrested for a violation of an order of protection entered pursuant to this section shall be treated as a person arrested for a violation of an order of protection issued pursuant to title 36, chapter 3, part 6.

(5) A violation of this subsection (e) is a Class A misdemeanor, and any sentence imposed is to be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations, unless the sentencing judge or magistrate specifically orders the sentences for the offenses arising out of the same facts to be served concurrently.

(f) Notwithstanding § 71-6-102, for purposes of this section:

(1) "Abuse, neglect, or exploitation" includes:

(A) Abuse, neglect, and exploitation, as those terms are defined in § 71-6-102; and

(B) Abuse, neglect, financial exploitation, and sexual exploitation, as those terms are defined in § 39-15-501; and

(2) "Adult" means an adult as defined in § 71-6-102 or an elderly adult or vulnerable adult as those terms are defined in § 39-15-501.

VII. Weapons.

39-17-1301. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to Article 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. §§ 850a and 876b respectively);

(2) "Club" means any instrument that is specially designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument;

(3) "Crime of violence" includes any degree of murder, voluntary manslaughter, aggravated rape, rape, rape of a child, especially aggravated rape of a child, aggravated sexual battery, especially aggravated robbery, aggravated robbery, burglary, aggravated burglary, especially aggravated burglary, aggravated assault, kidnapping, aggravated kidnapping, especially aggravated kidnapping, carjacking, trafficking for commercial sex act, especially aggravated sexual exploitation, felony child abuse, and aggravated child abuse;

(4)

(A) "Explosive weapon" means any explosive, incendiary or poisonous gas:

(i) Bomb;

(ii) Grenade;

(iii) Rocket;

(iv) Mine; or

(v) Shell, missile or projectile that is designed, made or adapted for the purpose of inflicting serious bodily injury, death or substantial property damage;

(B) "Explosive weapon" also means:

(i) Any breakable container which contains a flammable liquid with a flashpoint of one hundred fifty degrees Fahrenheit (150° F) or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for purposes of illumination; or

(ii) Any sealed device containing dry ice or other chemically reactive substances for the purposes of causing an explosion by a chemical reaction;

(5) "Hoax device" means any device that reasonably appears to be or is purported to be an explosive or incendiary device and is intended to cause alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies;

(6) "Immediate vicinity" refers to the area within the person's immediate control within which the person has ready access to the ammunition;

(7) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or 7;

(8) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument;

(9) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(10) "Machine gun" means any firearm that is capable of shooting more than two (2) shots automatically, without manual reloading, by a single function of the trigger;

(11) "Mental institution" means a mental health facility, mental hospital, sanitarium, psychiatric facility and any other facility that provides diagnoses by a licensed professional of an intellectual disability or mental illness, including, but not limited to, a psychiatric ward in a general hospital;

(12) "Restricted firearm ammunition" means any cartridge containing a bullet coated with a plastic substance with other than a lead or lead alloy core or a jacketed bullet with other than a lead or lead alloy core or a cartridge of which the bullet itself is wholly composed of a metal or metal alloy other than lead. "Restricted firearm ammunition" does not include shotgun shells or solid plastic bullets;

(13) "Rifle" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger;

(14) "Short barrel" means a barrel length of less than sixteen inches (16″) for a rifle and eighteen inches (18″) for a shotgun, or an overall firearm length of less than twenty-six inches (26″);

(15) "Shotgun" means any firearm designed, made or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger;

(16) "Switchblade knife" means any knife that has a blade which opens automatically by:

(A) Had pressure applied to a button or other device in the handle; or

(B) Operation of gravity or inertia; and

(17) "Unloaded" means the rifle, shotgun or handgun does not have ammunition in the chamber, cylinder, clip or magazine, and no clip or magazine is in the immediate vicinity of the weapon.

39-17-1307. Unlawful carrying or possession of a weapon.

(a)

(1) A person commits an offense who carries, with the intent to go armed, a firearm or a club.

(2)

(A) The first violation of subdivision (a)(1) is a Class C misdemeanor, and, in addition to possible imprisonment as provided by law, may be punished by a fine not to exceed five hundred dollars ($500).

(B) A second or subsequent violation of subdivision (a)(1) is a Class B misdemeanor.

(C) A violation of subdivision (a)(1) is a Class A misdemeanor if the person's carrying of a handgun occurred at a place open to the public where one (1) or more persons were present.

(b)

(1) A person commits an offense who unlawfully possesses a firearm, as defined in § 39-11-106, and:

(A) Has been convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon; or

(B) Has been convicted of a felony drug offense.

(2) An offense under subdivision (b)(1)(A) is a Class B felony.

(3) An offense under subdivision (b)(1)(B) is a Class C felony.

(c)

(1) A person commits an offense who possesses a handgun and has been convicted of a felony unless:

(A) The person has been pardoned for the offense;

(B) The felony conviction has been expunged; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29, and the restoration order does not specifically prohibit the person from possessing firearms.

(2) An offense under subdivision (c)(1) is a Class E felony.

(d)

(1) A person commits an offense who possesses a deadly weapon other than a firearm with the intent to employ it during the commission of, attempt to commit, or escape from a dangerous offense as defined in § 39-17-1324.

(2) A person commits an offense who possesses any deadly weapon with the intent to employ it during the commission of, attempt to commit, or escape from any offense not defined as a dangerous offense by § 39-17-1324.

(3)

(A) Except as provided in subdivision (d)(3)(B), a violation of this subsection (d) is a Class E felony.

(B) A violation of this subsection (d) is a Class E felony with a maximum fine of six thousand dollars ($6,000), if the deadly weapon is a switchblade knife.

(e)

(1) It is an exception to the application of subsection (a) that a person is carrying or possessing a firearm, loaded firearm, or firearm ammunition in a motor vehicle or boat if the person:

(A) Is not prohibited from possessing or receiving a firearm by 18 U.S.C. § 922(g) or purchasing a firearm by § 39-17-1316; and

(B) Is in lawful possession of the motor vehicle or boat.

(2)

(A) As used in this subsection (e):

(i) "Boat" means any watercraft, other than a seaplane on the water, designed and used primarily for navigation or transportation on the water; and

(ii) "Motor vehicle" has the same meaning as defined in § 55-1-103.

(B) This subsection (e) shall not apply to a motor vehicle or boat that is:

(i) Owned or leased by a governmental or private entity that has adopted a written policy prohibiting firearms, loaded firearms, or firearm ammunition not required for employment within the motor vehicle or boat; and

(ii) Provided by such entity to an employee for use during the course of employment.

(f)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and:

(A) Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921, and is still subject to the disabilities of such a conviction;

(B) Is, at the time of the possession, subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8); or

(C) Is prohibited from possessing a firearm under any other state or federal law.

(2) If the person is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute the business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives.

(3) For purposes of this section, a person does not possess a firearm, including, but not limited to, firearms registered under the National Firearms Act (26 U.S.C. § 5801 et seq.), if the firearm is in a safe or similar container that is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(4) A violation of subdivision (f)(1) is a Class A misdemeanor and each violation constitutes a separate offense.

(5) If a violation of subdivision (f)(1) also constitutes a violation of § 36-3-625(h) or § 39-13-113(h), the respondent may be charged and convicted under any or all such sections.

39-17-1316. Sales of dangerous weapons — Certification of purchaser — Exceptions — Licensing of dealers — Definitions.

(a)

(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, or who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective are prohibited. For purposes of this subdivision (a)(1), the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a "misdemeanor crime of domestic violence" for purposes of 18 U.S.C. § 921.

(2) The provisions of this subsection (a) prohibiting the sale of a firearm to a person convicted of a felony shall not apply if:

(A) The person was pardoned for the offense;

(B) The conviction has been expunged or set aside; or

(C) The person's civil rights have been restored pursuant to title 40, chapter 29; and

(D) The person is not prohibited from possessing a firearm by § 39-17-1307.

(b)

(1) As used in this section, "firearm" has the meaning as defined in § 39-11-106, including handguns, long guns, and all other weapons that meet the definition except "antique firearms" as defined in 18 U.S.C. § 921.

(2) As used in this section, "gun dealer" means a person engaged in the business, as defined in 18 U.S.C. § 921, of selling, leasing, or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise.

(c) Except with respect to transactions between persons licensed as dealers under 18 U.S.C. § 923, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

(1) The purchaser shall present to the dealer current identification meeting the requirements of subsection (f);

(2) The gun dealer shall complete a firearms transaction record as required by 18 U.S.C. §§ 921-929, and obtain the signature of the purchaser on the record;

(3) The gun dealer shall request by means designated by the bureau that the Tennessee bureau of investigation conduct a criminal history record check on the purchaser and shall provide the following information to the bureau:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the firearm being transferred;

(F) The name, gender, race, and date of birth of the purchaser;

(G) The social security number of the purchaser, if one has been assigned; and

(H) The type, issuer and identification number of the identification presented by the purchaser; and

(4) The gun dealer shall receive a unique approval number for the transfer from the bureau and record the approval number on the firearms transaction record.

(d) Upon receipt of a request of the gun dealer for a criminal history record check, the Tennessee bureau of investigation shall immediately, during the gun dealer's telephone call or by return call:

(1) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under subdivision (a)(1) from completing the purchase; and

(2) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(e)

(1) The Tennessee bureau of investigation may charge a reasonable fee, not to exceed ten dollars ($10.00), for conducting background checks and other costs incurred under this section, and shall be empowered to bill gun dealers for checks run.

(2) Funds collected by the Tennessee bureau of investigation pursuant to this section shall be deposited in a continuing deferred interest-bearing revenue fund that is created in the state treasury. This fund will not revert to the general fund on June 30 of any year. This fund shall be used to offset the costs associated with conducting background checks. By February 1 of each year the Tennessee bureau of investigation shall report to the judiciary committee of the senate and the judiciary committee of the house of representatives the amount of money collected pursuant to this section in excess of the costs associated with

conducting background checks as required by this section. The excess money shall be appropriated by the general assembly to the Tennessee bureau of investigation for other law enforcement related purposes as it deems appropriate and necessary.

(f)

(1) Identification required of the purchaser under subsection (c) shall include one (1) piece of current, valid identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(2) If the identification presented by the purchaser under subdivision (f)(1)(A) does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser.

(g) The Tennessee bureau of investigation may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the bureau.

(h) The Tennessee bureau of investigation shall establish a telephone number that shall be operational seven (7) days a week between the hours of eight o'clock a.m. and ten o'clock p.m. Central Standard Time (8:00 a.m. – 10:00 p.m. (CST)), except Christmas Day, Thanksgiving Day, and Independence Day, for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(i) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section; provided the employee, official or agency acts in good faith and without malice.

(j) Upon the determination that receipt of a firearm by a particular individual would not violate this section, and after the issuance of a unique identifying number for the transaction, the Tennessee bureau of investigation shall destroy all records (except the unique identifying number and the date that it was assigned) associating a particular individual with a particular purchase of firearms.

(k) A law enforcement agency may inspect the records of a gun dealer relating to transfers of firearms in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(l)

(1) The following transactions or transfers are exempt from the criminal history record check requirement of subdivision (c)(3):

(A) Transactions between licensed:

(i) Importers;

(ii) Manufacturers;

(iii) Dealers; and

(iv) Collectors who meet the requirements of subsection (b) and certify prior to the transaction the legal and licensed status of both parties;

(B) Transactions or transfers between a licensed importer, licensed manufacturer, or licensed dealer and a bona fide law enforcement agency or the agency's personnel. However, all other requirements of subsection (c) are applicable to a transaction or transfer under this subdivision (*l*)(1)(B); and

(C) Transactions by a gun dealer, as defined in subdivision (b)(2), making occasional sales, exchanges, or transfers of firearms that comprise all or part of the gun dealer's personal collection of firearms.

(2) The burden of proving the legality of any transaction or transfer under this subsection (*l*) is upon the transferor.

(m) The director of the Tennessee bureau of investigation is authorized to make and issue all rules and regulations necessary to carry out this section.

(n) In addition to the other grounds for denial, the bureau shall deny the transfer of a firearm if the background check reveals information indicating that the purchaser has been charged with a crime for which the purchaser, if convicted, would be prohibited under state or federal law from purchasing, receiving, or possessing a firearm; and, either there has been no final disposition of the case, or the final disposition is not noted.

(o) Upon receipt of the criminal history challenge form indicating a purchaser's request for review of the denial, the bureau shall proceed with efforts to obtain the final disposition information. The purchaser may attempt to assist the bureau in obtaining the final disposition information. If neither the purchaser nor the bureau is able to obtain the final disposition information within fifteen (15) calendar days of the bureau's receipt of the criminal history challenge form, the bureau shall immediately notify the federal firearms licensee that the transaction that was initially denied is now a "conditional proceed." A "conditional proceed" means that the federal firearms licensee may lawfully transfer the firearm to the purchaser.

(p) In any case in which the transfer has been denied pursuant to subsection (n), the inability of the bureau to obtain the final disposition of a case shall not constitute the basis for the continued denial of the transfer as long as the bureau receives written notice, signed and verified by the clerk of the court or the clerk's designee, that indicates that no final disposition information is available. Upon receipt of the letter by the bureau, the bureau shall immediately reverse the denial.

(q)

(1) It is an offense for a person to purchase or attempt to purchase a firearm knowing that the person is prohibited by state or federal law from owning, possessing or purchasing a firearm.

(2) It is an offense to sell or offer to sell a firearm to a person knowing that the person is prohibited by state or federal law from owning, possessing or purchasing a firearm.

(3) It is an offense to transfer a firearm to a person knowing that the person:

(A) Has been judicially committed to a mental institution or adjudicated as a mental defective unless the person's right to possess firearms has been restored pursuant to title 16; or

(B) Is receiving inpatient treatment, pursuant to title 33, at a treatment resource, as defined in § 33-1-101, other than a hospital.

(4) A violation of this subsection (q) is a Class A misdemeanor.

(r) The criminal history records check required by this section shall not apply to an occasional sale of a used or second-hand firearm by a person who is not engaged in the business of importing, manufacturing, or dealing in firearms, pursuant to 18 U.S.C. §§ 921 and 923.

39-17-1317. Confiscation and disposition of confiscated weapons.

(a)

(1) Any weapon that is possessed, used, or sold in violation of the law shall be confiscated by a law enforcement officer and declared to be contraband by a court of record exercising criminal jurisdiction.

(2)

(A) The sheriff or chief of police for the jurisdiction where the weapon was confiscated may petition the court for permission to dispose of the weapon in accordance with this section.

(B) If the weapon was confiscated by a judicial district drug task force, then the director of the task force where the weapon was confiscated may petition the court for disposal of the weapon in accordance with this section.

(C) If the weapon was confiscated by the department of safety, then the commissioner of safety may petition the court for disposal of the weapon in accordance with this section.

(D) If the weapon was confiscated by the Tennessee bureau of investigation, then the director may petition the court for disposal of the weapon in accordance with this section.

(b) Any weapon declared contraband, secured by a law enforcement officer or agency after being abandoned, voluntarily surrendered to a law enforcement officer or agency, or obtained by a law enforcement agency, including through a buyback program, shall be, pursuant to a written order of the court:

(1) Sold in a public sale;

(2) Used for legitimate law enforcement purposes, at the discretion of the court; or

(3) Relinquished in accordance with subsection (i).

(c) If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, by a local law enforcement agency or a judicial district drug task force and if the court orders the weapon to be sold, then:

(1) It shall be sold at a public auction not later than six (6) months from the date of the court order. The sale shall be conducted by the sheriff of the county or the chief of police of the municipality in which it was seized or obtained;

(2) The proceeds from the sale shall be deposited in the county or municipal general fund and allocated solely for law enforcement purposes;

(3) The sale shall be advertised:

(A) In a daily or weekly newspaper circulated within the county. The advertisement shall run for not less than three (3) editions and not less than thirty (30) days prior to the sale; or

(B) By posting the sale on a website maintained by the state or a political subdivision of the state not less than thirty (30) days prior to the sale; and

(4) If required by federal or state law, then the sale can be conducted under contract with a licensed firearm dealer, whose commission shall not exceed twenty percent (20%) of the gross sales price. However, the dealer shall not hold any elective or appointed position within the federal, state, or local government in this state during any stage of the sales contract.

(d) If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, by the department of safety or the Tennessee bureau of investigation and if the court orders it to be sold, then it shall be turned over to the department of general services, which shall sell the weapon and dispose of the proceeds of the sale in the same manner as it currently does for other confiscated weapons.

(e) If the court orders the weapon to be retained and used for legitimate law enforcement purposes, then:

(1) Title to the weapon shall be placed in the law enforcement agency or judicial district drug task force retaining the weapon; and

(2) When the weapon is no longer needed for legitimate law enforcement purposes, it shall be sold in accordance with this section.

(f) If the weapon is sold, then the commissioner of safety or the director of the Tennessee bureau of investigation, the sheriff, chief of police, or director of the judicial district drug task force shall file an affidavit with the court issuing the sale order. The affidavit shall:

(1) Be filed within thirty (30) days after the sale;

(2) Identify the weapon, including any serial number, and shall state the time, date, and circumstances of the sale; and

(3) List the name and address of the purchaser and the price paid for the weapon.

(g) Notwithstanding any other provisions of this section:

(1) A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon; provided, that the requirements of subdivision (g)(2) have been met; and

(2) A law enforcement agency possessing a weapon declared contraband, retained as evidence in an official proceeding, secured after being abandoned, or surrendered by someone other than the owner shall use best efforts to determine whether the weapon has been lost by or stolen or borrowed from an innocent owner, and if so, the agency shall return the weapon to the owner, if ascertainable, unless that person is ineligible to possess, receive, or purchase such weapon under state or federal law.

(h)

(1) Except in accordance with this section, no weapon seized by law enforcement officials or judicial district drug task force members shall be used for law enforcement purposes, sold, or destroyed.

(2) No weapon seized by law enforcement officials or judicial district drug task force members shall be used for any personal use.

(i) Notwithstanding this section, if the chief of police, sheriff, director of the judicial district drug task force, commissioner of safety, or director of the Tennessee bureau of investigation, depending upon who confiscated or obtained the weapon, certifies to the court that a weapon is inoperable or unsafe, then the court shall order the weapon:

(1) Destroyed or recycled; or

(2) Transferred to a museum or historical society that displays such items to the public and is lawfully eligible to receive the weapon.

(j) A violation of this section is a Class B misdemeanor.

(k) Nothing in this section shall authorize the purchase of any weapon, the possession of which is otherwise prohibited by law.

(l)

(1) The commissioner of safety, the director of the Tennessee bureau of investigation, the executive director of the Tennessee alcoholic beverage commission, the executive head of any local law enforcement agency, or the director of a judicial district drug task force may petition the criminal court or the court in the official's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled, as specified by this section, to the law enforcement agency or the drug task force for other firearms, ammunition, or body armor suitable for use by the law enforcement agency or drug task force.

(2) The exchange of firearms for the specified items used for legitimate law enforcement purposes is permitted only between the department of safety, the director of the Tennessee bureau of investigation, the executive director of the Tennessee alcoholic beverage commission, a local law enforcement agency, a judicial district drug task force, and a licensed and qualified law enforcement firearms dealer.

(3) No firearm obtained by a law enforcement agency through a buyback program shall be eligible to be exchanged under this subsection (*l*).

39-17-1351. Enhanced handgun carry permit.

(a) The citizens of this state have a right to keep and bear arms for their common defense; but the general assembly has the power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Except as provided in subsection (r), any resident of Tennessee who is a United States citizen or lawful permanent resident, as defined by § 55-50-102, may apply to the department of safety for an enhanced handgun carry permit. If the applicant is not prohibited from possessing a firearm in this state pursuant to § 39-17-1307(b), 18 U.S.C. § 922(g), or any other state or federal

law, and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant; provided:

(1) The applicant is at least twenty-one (21) years of age; or

(2) The applicant is at least eighteen (18) years of age; and

(A)

(i) Is an honorably discharged or retired veteran of the United States armed forces; and

(ii) Includes with the application a certified copy of the applicant's certificate of release or discharge from active duty, department of defense form 214 (DD 214);

(B)

(i) Is an honorably discharged member of the army national guard, the army reserve, the navy reserve, the marine corps reserve, the air national guard, the air force reserve, or the coast guard reserve, who has successfully completed a basic training program; and

(ii) Includes with the application a certified copy of the applicant's honorable discharge certificate, department of defense form 256 (DD 256), or report of separation and record of service, NGB form 22, that indicates an honorable discharge characterization; or

(C)

(i) Is a member of the United States armed forces on active duty status or is a current member of the army national guard, the army reserve, the navy reserve, the marine corps reserve, the air national guard, the air force reserve, or the coast guard reserve, who has successfully completed a basic training program; and

(ii) Includes with the application a military identification card or such other document as the commissioner designates as sufficient proof that the applicant is an active duty member of the military or a current member of the national guard or United States military reserve, who has successfully completed a basic training program.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on the application commits the felony offense of perjury pursuant to § 39-16-702. The following are eligibility requirements for obtaining an enhanced handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(1) Full legal name and any aliases;

(2) Addresses for the last five (5) years;

(3) Date of birth;

(4) Social security number;

(5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(7) That the applicant is not currently under indictment or information for any criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

(8) That the applicant is not currently subject to any order of protection and, if so, the applicant shall provide a copy of the order;

(9) That the applicant is not a fugitive from justice;

(10) That the applicant is not an unlawful user of or addicted to alcohol, any controlled substance or controlled substance analogue, and the applicant has not been either:

(A) A patient in a rehabilitation program pursuant to a court order or hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction pursuant to a court order within ten (10) years from the date of application; or

(B) A voluntary patient in a rehabilitation program or voluntarily hospitalized for alcohol, controlled substance or controlled substance analogue abuse or addiction within three (3) years from the date of application;

(11) That the applicant has not been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application and that none of the convictions has occurred within five (5) years from the date of application or renewal;

(12) That the applicant has not been adjudicated as a mental defective, has not been judicially committed to or hospitalized in a mental institution pursuant to title 33, has not had a court appoint a conservator for the applicant by reason of a mental defect, has not been judicially determined to be disabled by reason of mental illness, developmental disability or other mental incapacity, and has not, within seven (7) years from the date of application, been found by a court to pose an immediate substantial likelihood of serious harm, as defined in title 33, chapter 6, part 5, because of mental illness;

(13) That the applicant is not an alien and is not illegally or unlawfully in the United States;

(14) That the applicant has not been discharged from the armed forces under dishonorable conditions;

(15) That the applicant has not renounced the applicant's United States citizenship;

(16) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921;

(17) That the applicant is not receiving social security disability benefits by reason of alcohol dependence, drug dependence or mental disability; and

(18) That the applicant has not been convicted of the offense of stalking.

(d)

(1) In addition to the information required under subsection (c), the applicant shall be required to provide two (2) full sets of classifiable fingerprints at the time the application is filed with the department. The applicant's fingerprints may be taken by the department at the time the application is submitted or the applicant may have the fingerprints taken at any sheriff's office and submit the fingerprints to the department along with the application and other supporting documents. The sheriff may charge a fee not to exceed five dollars ($5.00) for taking the applicant's fingerprints. At the time an applicant's fingerprints are taken either by the department or a sheriff's office, the applicant shall be required to present a photo identification. If the person requesting fingerprinting is not the same person as the person whose picture appears on the photo identification, the department or sheriff shall refuse to take the fingerprints. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.

(2) An applicant shall also be required to present a photo identification to the department at the time of filing the application. If the name on the photo identification, name on the application and name on the fingerprint card, if taken by a sheriff, are not the same, the department shall refuse to accept the application. If the person whose picture appears on the photo identification is not the same as the applicant, the department shall refuse to accept the application.

(e) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course within one (1) year of the date of application. Any form created by the department to show proof of the successful completion of a department approved handgun safety course shall not require the applicant to provide the applicant's social security number. Any instructor of a department approved handgun safety course shall not withhold proof of the successful completion of the course solely on the fact the applicant did not disclose the applicant's social security number. The course shall include both classroom hours and firing range hours; provided, that an applicant shall not be required to comply with the firing range requirements if the applicant submits proof to the department that the applicant has successfully passed small arms qualification training or combat pistol training in any branch of the United States armed forces. Beginning September 1, 2010,

and thereafter, a component of the classroom portion of all department-approved handgun safety courses shall be instruction on alcohol and drugs, the effects of those substances on a person's reflexes, judgment and ability to safely handle a firearm, and § 39-17-1321. An applicant shall not be required to comply with the firing range and classroom hours requirements of this subsection (e) if the applicant submits proof to the department that within five (5) years from the date the application for an enhanced handgun carry permit is filed the applicant has:

(1) Been certified by the peace officer standards and training commission;

(2) Successfully completed training at the law enforcement training academy;

(3) Successfully completed the firearms training course required for armed security guard/officer registration, pursuant to § 62-35-118(b);

(4) Successfully completed all handgun training of not less than four (4) hours as required by any branch of the military; provided, however, that an applicant who seeks waiver of the training course pursuant to this subdivision (e)(4) may have completed the military handgun training at any time prior to submission of proof; or

(5) Successfully completed Tennessee department of correction firearms qualification.

(f) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(g)

(1) Upon receipt of a permit application, the department shall:

(A) Forward two (2) full sets of fingerprints of the applicant to the Tennessee bureau of investigation; and

(B) Send a copy of the application to the sheriff of the county in which the applicant resides.

(2) Within thirty (30) days of receiving an application, the sheriff shall provide the department with any information concerning the truthfulness of the applicant's answers to the eligibility requirements of subsection (c) that is within the knowledge of the sheriff.

(h) Upon receipt of the fingerprints from the department, the Tennessee bureau of investigation shall:

(1) Within thirty (30) days from receipt of the fingerprints, conduct computer searches to determine the applicant's eligibility for a permit under subsection (c) as are available to the bureau based solely upon the applicant's name, date of birth and social security number and send the results of the searches to the department;

(2) Conduct a criminal history record check based upon one (1) set of the fingerprints received and send the results to the department; and

(3) Send one (1) set of the fingerprints received from the department to the federal bureau of investigation, request a federal criminal history record check based upon the fingerprints, as long as the service is available, and send the results of the check to the department.

(i) The department shall deny a permit application if it determines from information contained in the criminal history record checks conducted by the Tennessee and federal bureaus of investigation pursuant to subsection (h), from information received from the clerks of court regarding individuals adjudicated as a mental defective or judicially committed to a mental institution pursuant to title 33, or from other information that comes to the attention of the department, that the applicant does not meet the eligibility requirements of this section. The department shall not be required to confirm the applicant's eligibility for a permit beyond the information received from the Tennessee and federal bureaus of investigation, the clerks of court and the sheriffs, if any.

(j) The department shall not deny a permit application if:

(1) The existence of any arrest or other records concerning the applicant for any indictment, charge or warrant have been judicially or administratively expunged;

(2) An applicant's conviction has been set aside by a court of competent jurisdiction;

(3) The applicant, who was rendered infamous or deprived of the rights of citizenship by judgment of any state or federal court, has had the applicant's full rights of citizenship duly restored pursuant to procedures set forth within title 40, chapter 29, or other federal or state law; provided, however, that this subdivision (j)(3) shall not apply to any person who has been convicted of a felony crime of violence, an attempt to commit a felony crime of violence, a felony drug offense, or a felony offense involving use of a deadly weapon; or

(4) The applicant, who was adjudicated as a mental defective or judicially committed to a mental institution, as defined in § 39-17-1301, has had the applicant's firearm disability removed by an order of the court pursuant to title 16, and either a copy of that order has been provided to the department by the TBI or a certified copy of that court order has been provided to the department by the applicant.

(k) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of the denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records or inquiries reviewed or relied upon by the department.

(l) The department shall issue a permit to an applicant not prohibited from obtaining a permit under this section no later than ninety (90) days after the date the department receives the application. A permit issued prior to the department's receipt of the Tennessee and federal bureaus of investigation's criminal history record checks based upon the applicant's fingerprints shall be subject to immediate revocation if either record check reveals that the applicant is not eligible for a permit pursuant to this section.

(m) A permit holder shall not be required to complete a handgun safety course to maintain or renew an enhanced handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining an enhanced handgun carry permit. No person shall be required to complete any additional handgun safety course if the person applies for a renewal of an enhanced handgun carry permit within eight (8) years from the date of expiration.

(n)

(1) Except as provided in subdivision (n)(2) and subsection (x), a permit issued pursuant to this section shall be good for eight (8) years and shall entitle the permit holder to carry any handgun or handguns that the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(2) A Tennessee permit issued pursuant to this section to a person who is in or who enters into the United States armed forces shall continue in effect for so long as the person's service continues and the person is stationed outside this state, notwithstanding the fact that the person may be temporarily in this state on furlough, leave, or delay en route, and for a period not to exceed sixty (60) days following the date on which the person is honorably discharged or separated from service or returns to this state on reassignment to a duty station in this state, unless the permit is sooner suspended, cancelled or revoked for cause as provided by law. The permit is valid only when in the immediate possession of the permit holder and the permit holder has in the holder's immediate possession the holder's discharge or separation papers, if the permit holder has been discharged or separated from the service.

(3) After the initial issuance of an enhanced handgun carry permit, the department shall conduct a name-based criminal history record check every four (4) years or upon receipt of an application.

(o)

(1) The permit shall be issued on a wallet-sized laminated card of the same approximate size as is used by this state for driver licenses and shall contain only the following information concerning the permit holder:

(A) The permit holder's name, address and date of birth;

(B) A description of the permit holder by sex, height, weight and eye color;

(C) A color photograph of the permit holder; and

(D) The permit number, issuance date, and expiration date.

(2) The following language must be printed on the back of the card: This permit is valid beyond the expiration date if the permit holder can provide documentation of the holder's active military status and duty station outside Tennessee.

(p)

(1) Except as provided in subsection (x), the department shall charge an application and processing fee of one hundred dollars ($100). The fee shall cover all aspects of processing the application and issuing a permit. In addition to any other portion of the permit application fee that goes to the Tennessee bureau of investigation, fifteen dollars ($15.00) of the fee shall go to the bureau for the sole purpose of updating and maintaining its fingerprint criminal history data base. On an annual basis, the comptroller of the treasury shall audit the bureau to ensure that the extra fifteen dollars ($15.00) received from each handgun permit application fee is being used exclusively for the purpose set forth in this subsection (p). By February 1 of each year the bureau shall provide documentation to the judiciary committee of the senate and the judiciary committee of the house of representatives that the extra fifteen dollars ($15.00) is being used exclusively for the intended purposes. The documentation shall state in detail how the money earmarked for fingerprint data base updating and maintenance was spent, the number and job descriptions of any employees hired and the type and purpose of any equipment purchased. Any person, who has been honorably discharged from any branch of the United States armed forces or who is on active duty in any branch of the armed forces or who is currently serving in the national guard or armed forces reserve, and who makes initial application for an enhanced handgun carry permit shall be required to pay only that portion of the initial application fee that is necessary to conduct the required criminal history record checks.

(2) The provisions of subdivision (p)(1) increasing each permit application fee by fifteen dollars ($15.00) for the purpose of fingerprint data base updating and maintenance shall not take effect if the general appropriation act provides a specific appropriation in the amount of two hundred fifty thousand dollars ($250,000), to defray the expenses contemplated in subdivision (p)(1). If the appropriation is not included in the general appropriations act, the fifteen dollar ($15.00) permit fee increase imposed by subdivision (p)(1) shall take effect on July 1, 1997, the public welfare requiring it.

(3) Beginning July 1, 2008, fifteen dollars ($15.00) of the fee established in subdivision (p)(1) shall be submitted to the sheriff of the county where the applicant resides for the purpose of verifying the truthfulness of the applicant's answers as provided in subdivision (g)(1).

(q)

(1) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of the permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars ($50.00). The renewal application shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (c), and shall require the applicant to certify that the applicant still satisfies all the eligibility requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding the renewal application, the permit holder shall be entitled to continue to use the expired permit; provided, however, that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit. The department is authorized to contract with a local government agency for the provision of any service related to the renewal of enhanced handgun carry permits, subject to applicable contracting statutes and regulations. An agency contracting with the department is authorized to charge an additional fee of four dollars ($4.00) for each renewal application, which shall be retained by the agency for administrative costs.

(2)

(A) A person may renew that person's enhanced handgun carry permit beginning six (6) months prior to the expiration date on the face of the card, and, if the permit is not expired, the person shall only be required to comply with the renewal provisions of subdivision (q)(1).

(B) Any person who applies for renewal of that person's enhanced handgun carry permit after the expiration date on the face of the card shall only be required to comply with the renewal provisions of subdivision (q)(1) unless the permit has been expired for more than eight (8) years.

(C) Any person who applies for renewal of an enhanced handgun carry permit when the permit has been expired for more than eight (8) years, shall, for all purposes, be considered a new applicant.

(3) If a person whose enhanced handgun carry permit remained valid pursuant to subdivision (n)(2) because the person was in the United States armed forces applies for a renewal of the permit within eight (8) years of the expiration of the sixty (60) day period following discharge, separation, or return to this state on reassignment to a duty station in this state as provided in subdivision (n)(2), the person shall only be required to comply with the renewal provisions of subdivision (q)(1). If the renewal application is filed eight (8) years or more from expiration of the sixty (60) day period following the date of honorable discharge, separation, or return to this state on reassignment to a duty station in this state, the person shall, for all purposes, be considered a new applicant.

(r)

(1) A facially valid handgun permit, firearms permit, weapons permit or license issued by another state shall be valid in this state according to its terms and shall be treated as if it is a handgun permit issued by this state; provided, however, this subsection (r) shall not be construed to authorize the holder of any out-of-state permit or license to carry, in this state, any firearm or weapon other than a handgun.

(2) For a person to lawfully carry a handgun in this state based upon a permit or license issued in another state, the person must be in possession of the permit or license at all times the person carries a handgun in this state.

(3)

(A) The commissioner of safety shall enter into written reciprocity agreements with other states that require the execution of the agreements. The commissioner of safety shall prepare and publicly publish a current list of states honoring permits issued by the state of Tennessee and shall make the list available to anyone upon request. The commissioner of safety shall also prepare and publicly publish a current list of states who, after inquiry by the commissioner, refuse to enter into a reciprocity agreement with this state or honor enhanced handgun carry permits issued by this state. To the extent that any state may impose conditions in the reciprocity agreements, the commissioner of safety shall publish those conditions as part of the list. If another state imposes conditions on Tennessee permit holders in a reciprocity agreement, the conditions shall also become a part of the agreement and apply to the other state's permit holders when they carry a handgun in this state.

(B) If a person with a handgun permit from another state decides to become a resident of Tennessee, the person must obtain a Tennessee handgun permit within six (6) months of establishing residency in Tennessee. The permit may be issued based on the person having a permit from another state provided the other state has substantially similar permit eligibility requirements as this state. However, if during the six-month period the person applies for a handgun permit in this state and the application is denied, the person shall not be allowed to carry a handgun in this state based upon the other state's permit.

(C)

(i) If a person who is a resident of and handgun permit holder in another state is employed in this state on a regular basis and desires to carry a handgun in this state, the person shall have six (6) months from the last day of the sixth month of regular employment in this state to obtain a Tennessee enhanced handgun carry permit. The permit may be issued based on the person having a permit from another state provided the other state has substantially similar permit eligibility requirements as this state. However, if during the six-month period the person applies for a handgun permit in this state and the application is denied, the person shall not be allowed to carry a handgun in this state based upon the other state's permit.

(ii) This subdivision (r)(3)(C) shall not apply if the state of residence of the person employed in Tennessee has entered into a handgun permit reciprocity agreement with this state pursuant to this subsection (r).

(iii) As used in this subdivision (r)(3)(C), “employed in this state on a regular basis” means a person has been gainfully employed in this state for at least thirty (30) hours a week for six (6) consecutive months not counting any absence from employment caused by the employee's use of sick leave, annual leave, administrative leave or compensatory time.

(s)

(1) The department shall make available, on request and payment of a reasonable fee to cover the costs of copying, a statistical report that includes the number of permits issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender and zip code of the applicant or permit holder and the reason for any permit revocation or suspension. The report shall also include the cost of the program, the revenues derived from fees, the number of violations of the enhanced handgun carry permit law, and the average time for issuance of an enhanced handgun carry permit. By January 1 of each year, a copy of the statistical reports for the preceding calendar year shall be provided to each member of the general assembly.

(2)

(A) The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person who has a permit to carry a handgun under this section is arrested and booked for any offense.

(B) The department by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall adopt procedures for state and local law enforcement officials to report the information required by subdivision (s)(2)(A) to the department.

(t) Any law enforcement officer of this state or of any county or municipality may, within the realm of the officer's lawful jurisdiction and when the officer is acting in the lawful discharge of the officer's official duties, disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual or individuals. The officer shall return the handgun to the permit holder before discharging the permit holder from the scene when the officer has determined that the permit holder is not a threat to the officer, to the permit holder, or other individual or individuals; provided, that the permit holder has not violated any provision of this section and provided the permit holder has not committed any other violation that results in the arrest of the permit holder.

(u) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(v) Any permit issued pursuant to this section shall be deemed a "license" within the meaning of title 36, chapter 5, part 7, dealing with the enforcement of child support obligations through license denial and revocation.

(w)

(1) Notwithstanding any other law or rule to the contrary, neither the department nor an instructor or employee of a department approved handgun safety course is authorized to require any applicant for an enhanced handgun carry permit to furnish or reveal identifying information concerning any handgun the applicant owns, possesses or uses during the safety course in order to apply for or be issued the permit.

(2) For purposes of subdivision (w)(1), "identifying information concerning any handgun" includes, but is not limited to, the serial number, model number, make of gun or manufacturer, type of gun, such as revolver or semi-automatic, caliber or whether the applicant owns the handgun used for the safety course.

(x)

(1) Any resident of Tennessee who is a United States citizen or lawful permanent resident, as defined by § 55-50-102, who has reached twenty-one (21) years of age, may apply to the department of safety for a lifetime enhanced handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this state pursuant to § 39-17-1316 or § 39-17-1307(b), 18 U.S.C. § 922(g), or any other state or federal law, and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant. The lifetime enhanced handgun carry permit shall entitle the permit holder to carry any handgun or handguns the permit holder legally owns or possesses and shall entitle the permit holder to any privilege granted to enhanced handgun carry permit holders. The requirements imposed on enhanced handgun carry permit holders by this section shall also apply to lifetime enhanced handgun carry permit holders.

(2) The department shall charge an application and processing fee for a lifetime enhanced handgun carry permit equal to the application and processing fee charged under subsection (p) plus a lifetime enhanced handgun carry permit fee of two hundred dollars ($200); provided, however, that a permit holder who is applying for the renewal of an enhanced handgun carry permit under subsection (q) may instead obtain a lifetime enhanced handgun carry permit by submitting to the department a fee of two hundred dollars ($200). The application process shall otherwise be the same as the application process for an enhanced handgun carry permit as set out in this section. Any funds from the fees paid pursuant to this subdivision (x)(2) that are not used for processing applications and issuing permits shall be retained by the department to fund any necessary system modifications required to create a lifetime enhanced handgun carry permit and monitor the eligibility of lifetime enhanced handgun carry permit holders as required by subdivision (x)(3).

(3) A lifetime enhanced handgun carry permit shall not expire and shall continue to be valid for the life of the permit holder unless the permit holder no longer meets the requirements of this section. A lifetime enhanced handgun carry permit shall not be subject to renewal; provided, however, that every five (5) years after issuance of the lifetime enhanced handgun carry permit, the department shall conduct a criminal history record check in the same manner as required for enhanced handgun carry permit renewals. Upon discovery that a lifetime enhanced handgun carry permit holder no longer satisfies the requirements of this section, the department shall suspend or revoke the permit pursuant to § 39-17-1352.

(4)

(A) If the lifetime enhanced handgun carry permit holder's permit is suspended or revoked, the permit holder shall deliver, in person or by mail, the permit to the department within thirty (30) days of the suspension or revocation.

(B) If the department does not receive the lifetime enhanced handgun carry permit holder's suspended or revoked permit within thirty (30) days of the suspension or revocation, the department shall send notice to the permit holder that:

(i) The permit holder has thirty (30) days from the date of the notice to deliver the permit, in person or by mail, to the department; and

(ii) If the permit holder fails to deliver the suspended or revoked permit to the department within thirty (30) days of the date of the notice, the department will suspend the permit holder's driver license.

(C) If the department does not receive the lifetime enhanced handgun carry permit holder's suspended or revoked permit within thirty (30) days of the date of the notice provided by the department, the department shall suspend the permit holder's driver license in the same manner as provided in § 55-50-502.

(5) The total fee required by subdivision (x)(2) shall be waived if the applicant:

(A) Is a former federal, state, or local law enforcement officer, as defined in § 39-11-106;

(B) Served for at least ten (10) years prior to leaving the law enforcement agency and was POST-certified, or had equivalent training, on the date the officer left the law enforcement agency;

(C) Was in good standing at the time of leaving the law enforcement agency, as certified by the chief law enforcement officer or designee of the organization that employed the applicant; and

(D) Is a resident of this state on the date of the application.

(y) An applicant shall not be required to comply with the firing range requirements of this section if the applicant:

(1) Is an active duty service member or honorably discharged or retired veteran of the United States armed forces;

(2) Has a military occupational specialty, special qualification identifier, skill identifier, specialty code, or rating that identifies a service qualification in military police, special operations, or special forces; and

(3) Presents to the department a certified copy of the applicant's certificate of release or discharge from active duty, department of defense form 214 (DD 214), or other official documentation that provides proof of the service criteria required under this subsection (y).

39-17-1352. Suspension or revocation of license.

(a) The department shall suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permit holder:

(1) Is prohibited from purchasing a handgun under applicable state or federal law;

(2) Has not accurately disclosed any material information required by § 39-17-1351 or § 39-17-1366;

(3) Poses a material likelihood of risk of harm to the public;

(4) Has been arrested for a felony crime of violence, an attempt to commit a felony crime of violence, a felony involving the use of a deadly weapon, or a felony drug offense;

(5) Has been convicted of a felony;

(6) Has violated any other provision of §§ 39-17-1351 – 39-17-1360 or § 39-17-1366;

(7) Has at any time committed an act or omission or engaged in a pattern of conduct that would render the permit holder ineligible to apply for or obtain a permit under the eligibility requirements of § 39-17-1351 or § 39-17-1366;

(8) Has been convicted of domestic assault as defined in § 39-13-111, or any other misdemeanor crime of domestic violence and is still subject to the disabilities of such a conviction;

(9) Is subject to a current order of protection that fully complies with 18 U.S.C. § 922(g)(8); or

(10) Has been judicially committed to a mental institution pursuant to title 33, chapter 6 or title 33, chapter 7 or has been adjudicated as a mental defective.

(b)

(1) It is an offense for a permit holder to knowingly fail or refuse to surrender to the department a suspended or revoked handgun permit within ten (10) days from the date appearing on the notice of suspension or revocation sent to such permit holder by the department.

(2) A violation of this subsection (b) is a Class A misdemeanor.

(c)

(1) Upon the suspension or revocation of a permit, the department shall send notice of the suspension or revocation to the permit holder and the appropriate local law enforcement officers. The notice shall state the following:

(A) That the permit has been immediately suspended or revoked;

(B) That the permit holder must surrender the permit to the department within ten (10) days of the date appearing on the notice;

(C) That it is a Class A misdemeanor punishable by up to one (1) year in jail for the permit holder to knowingly fail or refuse to surrender the permit to the department within the ten-day period;

(D) That if the permit holder does not surrender the suspended or revoked permit within the ten-day period, a law enforcement officer will be directed to take possession of the permit; and

(E) That the permit holder has thirty (30) days from the date appearing on the notice of suspension or revocation to request a hearing on the suspension or revocation.

(2) If the permit holder fails to surrender the suspended or revoked permit as required by this section, the department shall issue authorization to the appropriate local law enforcement officials to take possession of the suspended or revoked permit and send it to the department.

(d) The applicant shall have a right to petition the general sessions court of the applicant's county of residence for judicial review of departmental denial, suspension or revocation of a permit. At the review by the general sessions court, the department shall be represented by the district attorney general.

(e)

(1) If a permit holder is arrested and charged with burglary, a felony drug offense or a felony offense involving violence or the use of a firearm, then the court first having jurisdiction over the permit holder with respect to the felony charge shall inquire as to whether the person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order that required the surrender of the permit. The department shall suspend the permit pending a final disposition on the felony charge against the permit holder.

(2) If a permit holder is arrested and charged with any felony offense other than an offense subject to subdivision (e)(1), then the court first having jurisdiction over the permit holder with respect to the felony charge shall inquire as to whether the person has been issued a Tennessee handgun carry permit, order the permit holder to surrender the permit and send the permit to the department with a copy of the court's order that required the surrender of the permit, unless the permit holder petitions the court for a hearing on the surrender. If the permit holder does petition the court, the court shall determine whether the permit holder will present a material risk of physical harm to the public if released and allowed to retain the permit. If the court determines that the permit holder will present a material risk of physical harm to the public, it shall condition any release of the permit holder, whether on bond or otherwise, upon the permit holder's surrender of the permit to the court. Upon surrender of the permit, the court shall send the permit to the department with a copy of the court's order that required the surrender of the permit and the department shall suspend the permit pending a final disposition of the felony charges against the permit holder.

(3) If the permit holder is acquitted on the charge or charges, the permit shall be restored to the holder and the temporary prohibition against the carrying of a handgun shall be lifted.

(4) If the permit holder is convicted of the charge or charges, the permit shall be revoked by the court and the revocation shall be noted in the judgment and minutes of the court. The court shall send the surrendered permit to the department.

(5) If the permit holder is placed on pretrial diversion or judicial diversion, the permit holder's privilege to lawfully carry a handgun shall be suspended for the length of time the permit holder is subject to the jurisdiction of the court. The court shall send the surrendered permit to the department.

(f)

(1) If a permit holder is convicted of a Class A misdemeanor offense, the permit holder shall surrender the permit to the court having jurisdiction of the case for transmission to the department.

(2) The permit holder shall not be permitted to lawfully carry a handgun or exercise the privileges conferred by the permit for the term of the sentence imposed by the court for the offense or offenses for which the permit holder was convicted.

(g) In order to reinstate a permit suspended pursuant to subsection (e) or (f), the permit holder shall pay a reinstatement fee of twenty-five dollars ($25.00) with one half (½) of the fee payable to the department of safety and one half (½) payable to the court that suspended the permit.

(1) Prior to the reinstatement of the permit, the permit holder shall have paid in full all fines, court costs and restitution, if any, required by the sentencing court.

(2) Failure to complete any terms of probation imposed by the court shall be a bar to reinstatement of the permit.

(3) Prior to reissuance of the permit, the department shall verify that the permit holder has complied with all reinstatement requirements of this subsection (g).

40-14-109. Domestic violence offenses — Notice to defendant.

(a) As used in this section, "domestic violence offense" means an offense that:

(1) Is classified as a misdemeanor in this state;

(2) Has as an element of the offense the use or attempted use of physical force or the threatened use of a deadly weapon; and

(3) Is committed by a:

(A) Current or former spouse, parent, or guardian of the victim;

(B) Person with whom the victim shares a child in common;

(C) Person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or

(D) Person similarly situated to a spouse, parent, or guardian of the victim.

(b) Before the court accepts the guilty plea of a defendant charged with a domestic violence offense, it shall notify the defendant of the following:

(1) Pursuant to § 39-17-1307(f)(1), and 18 U.S.C. § 922(g), it is a state and federal offense for a person convicted of a domestic violence offense, and who is still subject to the disabilities of such a conviction, to possess or purchase a firearm. This means that from the moment of conviction for a domestic violence offense, the defendant will never again be able to lawfully possess or buy a firearm of any kind;

(2) A defendant convicted of a domestic violence offense also must lawfully dispose of all firearms in the defendant's possession at the time of the conviction;

(3) If the defendant possesses firearms as business inventory or that are registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), there are additional statutory provisions that may apply and these additional provisions will be included in the court's order; and

(4) A firearm subject to dispossession as the result of a domestic violence conviction will not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to committing the domestic violence offense constituted an independent offense for which the defendant has been convicted, or the firearms are abandoned by the defendant.

(c) After informing the defendant of the firearm consequences of a conviction for a domestic violence offense pursuant to subsection (b), the court may accept the plea of guilty if the defendant clearly states on the record that the defendant is aware of the consequences of a conviction for a domestic violence offense and still wishes to enter a plea of guilty.

(d)

(1) If a defendant is not represented by an attorney but wishes to proceed to trial on a charge of committing a domestic violence offense, the court shall also inform the defendant of the consequences of a conviction for a domestic violence offense as provided in subsection (b).

(2) If a defendant is represented by an attorney and the defendant intends to proceed to trial on a charge of committing a domestic violence offense, prior to commencement of the trial, the judge shall inquire of the defendant's attorney if the attorney has advised the defendant of the consequences of a conviction for a domestic violence offense. If not, the judge shall instruct the attorney to so advise the defendant.

(e) If a defendant is found guilty by a jury or the court of a domestic violence offense, the court, immediately upon conviction, shall notify the defendant of the consequences of such a conviction as set out in subsection (b).

VIII. Sex Offender Registry.

40-39-201. Short title — Legislative findings.

(a) This part shall be known as and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004."

(b) The general assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment and protection of the public from these offenders is of paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part, to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions that are implemented at sentencing or, at the time of release from incarceration, that require that those who are financially able must pay specified administrative costs to the appropriate registering agency, which shall retain one hundred dollars ($100) of these costs for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year, with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry; provided, that a juvenile offender required to register under this part shall not be required to pay the administrative fee until the offender reaches eighteen (18) years of age; and

(8) The general assembly also declares, however, that in making information about certain offenders available to the public, the general assembly does not intend that the information be used to inflict retribution or additional punishment on those offenders.

40-39-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court in any other state of the United States, other jurisdiction or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense if committed in this state shall be considered a conviction for the purposes of this part. An adjudication in another state for a delinquent act committed in another jurisdiction that would be classified as a violent juvenile sexual offense under this section, if committed in this state, shall be considered a violent juvenile sexual offense for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction. "Conviction" also includes a juvenile delinquency adjudication for a violent juvenile sexual offense if the offense occurs on or after July 1, 2011;

(2) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the department of correction or court ordered probation officer;

(3) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(4) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(5) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(6) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(7) "Minor" means any person under eighteen (18) years of age;

(8) "Month" means a calendar month;

(9) "Offender" means sexual offender, violent sexual offender and violent juvenile sexual offender, unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender or as a violent juvenile sexual offender and as a violent sexual offender shall be considered a violent sexual offender;

(10) "Offender against children" means any sexual offender, violent sexual offender or violent juvenile sexual offender if the victim in one (1) or more of the offender's crimes was a child of twelve (12) years of age or less;

(11) "Parent" means any biological parent, adoptive parent or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(12) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;

(13) "Register" means the initial registration of an offender, or the re-registration of an offender after deletion or termination from the SOR;

(14) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction, a private contractor with the Tennessee department of correction or the board;

(15) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(d)(1)-(15);

(16) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) "Resident" means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) "Secondary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b) or aggravated statutory rape under § 39-13-506(c), or if the judge orders the person to register as a sexual offender pursuant to § 39-13-506(d);

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vi) Kidnapping, where the victim is a minor, under § 39-13-303, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class D felony, Class E felony or a misdemeanor;

(ix) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507 [repealed];

(x) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (20)(A);

(xi) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (20)(A);

(xii) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiii) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (20)(A);

(xiv) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (20)(A);

(xv) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvi) Aggravated statutory rape, under § 39-13-506(c);

(xvii) Soliciting sexual exploitation of a minor — exploitation of a minor by electronic means, under § 39-13-529;

(xviii) Promotion of prostitution, under § 39-13-515;

(xix) Patronizing prostitution where the victim is a minor, under § 39-13-514;

(xx) Observation without consent, under § 39-13-607, upon a third or subsequent conviction;

(xxi) Observation without consent, under § 39-13-607 when the offense is classified as a Class E felony;

(xxii) Unlawful photographing under § 39-13-605 when the offense is classified as a Class E or Class D felony;

(xxiii) Sexual contact with inmates, under § 39-16-408;

(xxiv) Unlawful photographing, under § 39-13-605, when convicted as a misdemeanor if the judge orders the person to register as a sexual offender pursuant to § 39-13-605; or

(xxv) Aggravated unlawful photography, under § 39-13-611;

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);

(21) "Social media" means websites and other online means of communication that are usually used by large groups of people to share information, to develop social and professional contacts, and that customarily require an identifying password and user identification to participate;

(22) "SOR" means the TBI's centralized record system of offender registration, verification and tracking information;

(23) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(24) "TBI" means the Tennessee bureau of investigation;

(25) "TBI registration form" means the Tennessee sexual offender registration, verification and tracking form;

(26) "TDOC" means the Tennessee department of correction;

(27) "TIES" means the Tennessee information enforcement system;

(28)

(A) "Violent juvenile sexual offender" means a person who is adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense; provided, that the person is at least fourteen (14) years of age but less than eighteen (18) years of age at the time the act is committed;

(B) Upon an adjudication of delinquency in this state for an act that constitutes a violent juvenile sexual offense, the violent juvenile sexual offender shall also be considered a violent sexual offender under this part, unless otherwise set out in this part;

(29)

(A) "Violent juvenile sexual offense" means an adjudication of delinquency, for any act committed on or after July 1, 2011, that, if committed by an adult, constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Rape of a child, under § 39-13-522, provided the victim is at least four (4) years younger than the offender;

(iv) Aggravated rape of a child, under § 39-13-531; or

(v) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (29)(A);

(B) "Violent juvenile sexual offense" also means an adjudication of delinquency, for any act committed on or after July 1, 2014, that, if committed by an adult, constitutes the criminal offense of:

(i) Aggravated sexual battery, under § 39-13-504;

(ii) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (29)(B);

(30) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(31) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];

(N) Criminal exposure to HIV, under § 39-13-109(a)(1);

(O) Statutory rape by an authority figure, under § 39-13-532;

(P) Criminal attempt, under § 39-12-101, § 39-12-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (31);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (31);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (31);

(S) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (31);

(T) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (31);

(U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (31);

(V) Incest, under § 39-15-302;

(W) Aggravated rape of a child under § 39-13-531;

(X) Aggravated prostitution, under § 39-13-516; provided, that the offense occurs on or after July 1, 2010;

(Y) Trafficking for a commercial sex act, under § 39-13-309;

(Z) Promotion of prostitution, under § 39-13-515, where the person has a prior conviction for promotion of prostitution; or

(AA) Continuous sexual abuse of a child, under § 39-13-518; and

(32) "Within forty-eight (48) hours" means a continuous forty-eight-hour period, not including Saturdays, Sundays or federal or state holidays.

40-39-203. Offender registration — Registration forms — Contents.

(a)

(1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, becoming employed or practicing a vocation or becoming a student in this state, the offender shall register or report in person, as required by this part. Likewise, within forty-eight (48) hours of release on probation or any alternative to incarceration, excluding parole, the offender shall register or report in person, as required by this part.

(2) Regardless of an offender's date of conviction, adjudication or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) is required to register in person as required by this part, if the person was required to register as any form of sexual offender, juvenile offender or otherwise, in another jurisdiction prior to the offender's presence in this state.

(3) An offender who resides and is registered in this state and who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of the intention to move to another state, register or report to the offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

(4) Within forty-eight (48) hours of a change in any other information given to the registering agency by the offender that is contained on the registration form, the offender must report the change to the registering agency.

(5) Within forty-eight (48) hours of being released from probation or parole, an offender must report to the proper law enforcement agency, which shall then become the registering agency and take over registry duties from the department of correction.

(6) Within forty-eight (48) hours of a material change in employment or vocation status, the offender shall report the change to the person's registering agency. For purposes of this subdivision (a)(6), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment or any other change in the offender's employment or vocation that differs from that

which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(7) Within three (3) days, excluding holidays, of an offender changing the offender's electronic mail address information, any instant message, chat or other internet communication name or identity information that the person uses or intends to use, whether within or without this state, the offender shall report the change to the offender's designated law enforcement agency.

(b)

(1) An offender who is incarcerated in this state in a local, state or federal jail or a private penal institution shall, within forty-eight (48) hours prior to the offender's release, register or report in person, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(2) After registering or reporting with the incarcerating facility as provided in subdivision (b)(1), an offender who is incarcerated in this state in a local, state or federal jail or a private penal institution shall, within forty-eight (48) hours after the offender's release from the incarcerating institution, report in person to the offender's registering agency, unless the place of incarceration is also the person's registering agency.

(3) Notwithstanding subdivisions (b)(1) and (2), an offender who is incarcerated in this state in a local, state or federal jail or a private penal institution and who has not registered pursuant to § 40-39-212(a) or any other law shall, by August 1, 2011, be required to report in person, register, complete and sign a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(c) An offender from another state, jurisdiction or country who has established a primary or secondary residence within this state or has established a physical presence at a particular location shall, within forty-eight (48) hours of establishing residency or a physical presence, register or report in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3).

(d)

(1) An offender from another state, jurisdiction or country who is not a resident of this state shall, within forty-eight (48) hours of employment, commencing practice of a vocation or becoming a student in this state, register or report in person, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), with:

(A) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(B) The law enforcement agency or any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(2) Within forty-eight (48) hours of an offender from another state, jurisdiction or country who is not a resident of this state making a material change in the offender's vocational or employment or vocational status within this state, the offender shall report the change to the person's registering agency. For purposes of this subdivision (d)(2), “a material change in employment or vocational status” includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(e) An offender from another state, jurisdiction or country who becomes a resident of this state, pursuant to the Interstate Compact for Supervision of Adult Offenders, compiled in title 40, chapter 28, part 4, shall, within forty-eight (48) hours of entering the state, register or report in person with the board, completing and signing a TBI registration form, under penalty of perjury,

pursuant to § 39-16-702(b)(3), in addition to the requirements of title 40, chapter 28, part 4 and the specialized conditions for sex offenders from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless and are subject to the registration requirements of this part. Offenders who do not maintain either a primary or secondary residence shall be required to report to their registering agency monthly for so long as they do not maintain either a primary or secondary residence.

(g) Offenders who were previously required to register or report under former title 40, chapter 39, part 1 [repealed], shall register or report in person with the designated law enforcement agency by August 31, 2005. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form the offender's intent to reside in another state, jurisdiction or country and who then decides to remain in this state shall, within forty-eight (48) hours of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (i).

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases, including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise, including pseudonyms and ethnic or tribal names;

(2) Date and place of birth;

(3) Social security number;

(4) A photocopy of a valid driver license, or if no valid driver license has been issued to the offender, a photocopy of any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address and telephone number of the registrant's probation or parole officer or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted, the date of the offenses and the county and state of each conviction; or the violent juvenile sexual offense for which the registrant has been adjudicated delinquent, the date of the act for which the adjudication was made and the county and state of each adjudication;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer or manufactured home used or owned by an offender, including descriptions, vehicle information numbers and license tag numbers;

(11) Any vessel, live-aboard vessel or houseboat used by an offender, including the name of the vessel, description and all identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed or practices a vocation or is a student;

(13) Race and gender;

(14) Name, address and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults, the number of victims and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known;

(16) Verification by the TBI or the offender that the TBI has received the offender's DNA sample;

(17) A complete listing of the offender's electronic mail address information, including usernames, any social media accounts the offender uses or intends to use, instant message, other internet communication platforms or devices, and the offender's username, screen name, or other method by which the offender accesses these accounts or websites;

(18) Whether any minors reside in the primary or secondary residence;

(19)

(A) Any other registration, verification and tracking information, including fingerprints and a current photograph of the offender, vehicles and vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(B) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by subdivision (i)(19)(A). The rules shall specify that the photograph or digital image submitted for each offender must conform to the following compositional specifications or the entry will not be accepted for use on the registry and the agency will be required to resubmit the photograph:

(i) Head Position:

(a) The person being photographed must directly face the camera;

(b) The head of the person should not be tilted up, down or to the side; and

(c) The head of the person should cover about fifty percent (50%) of the area of the photo;

(ii) Background:

(a) The person being photographed should be in front of a neutral, light-colored background; and

(b) Dark or patterned backgrounds are not acceptable;

(iii) The photograph must be in focus;

(iv) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted; and

(v) Head Coverings and Hats:

(a) Photographs of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; and

(b) Photos of applicants with tribal or other headgear not specifically religious in nature are not permitted;

(20) Copies of all passports and immigration documents; and

(21) Professional licensing information that authorizes an offender to engage in an occupation or carry out a trade or business.

(j)

(1) Notwithstanding the registration deadlines otherwise established by this section, any person convicted of a sexual offense or violent sexual offense in this state or who has another qualifying conviction as defined in § 40-39-202, but who is not required to register for the reasons set out in subdivision (j)(2), shall have until August 1, 2007, to register as a sexual offender or violent sexual offender in this state.

(2) Subdivision (j)(1) shall apply to offenders:

(A) Whose convictions for a sexual offense or violent sexual offense occurred prior to January 1, 1995;

(B) Who were not on probation, parole or any other alternative to incarceration for a sexual offense or prior sexual offense on or after January 1, 1995;

(C) Who were discharged from probation, parole or any other alternative to incarceration for a sexual offense or violent sexual offense prior to January 1, 1995; or

(D) Who were discharged from incarceration without supervision for a sexual offense or violent sexual offense prior to January 1, 1995.

(k) No later than the third day after an offender's initial registration, the registration agency shall send by the United States postal service or by electronic means the original signed TBI registration form containing information required by subsection (i) to TBI headquarters in Nashville.

(l) The offender's signature on the TBI registration form creates the presumption that the offender has knowledge of the registration, verification and tracking requirements of this part.

(m) Registry information regarding all registered offender's electronic mail address information, any instant message, chat or other internet communication name or identity information may be electronically transmitted by the TBI to a business or organization that offers electronic communication or remote computing services for the purpose of prescreening users or for comparison with information held by the requesting business or organization. In order to obtain the information from the TBI, the requesting business or organization that offers electronic communication or remote computing services shall agree to notify the TBI forthwith when a comparison indicates that any such registered sex offender's electronic mail address information, any instant message, chat or other internet communication name or identity information is being used on their system. The requesting business or organization shall also agree that the information will not be further disseminated.

(n) If the offender's DNA sample has not already been collected pursuant to § 40-35-321 or any other law and received by the TBI, the offender's DNA sample shall be taken by the registering agency at the time the offender registers or at the offender's next scheduled registration or reporting and sent to the TBI.

(o) An offender who registers or reports as required by this section prior to July 1, 2008, shall provide the additional information on the registration form required by this section at the offender's next scheduled registration or reporting date.

(p) An offender who is housed in a halfway house or any other facility as an alternative to incarceration where unsupervised contact is permitted outside of the facility is required to register or report with the registering agency as set out in § 40-39-204 in the city or county of the facility in which the offender is housed. The registering agency shall be responsible for the duties set out in § 40-39-205(b) during the time that the offender is housed in the facility.

(q) Any court exercising juvenile jurisdiction that adjudicates a juvenile as delinquent for conduct that qualifies such juvenile as a violent juvenile sexual offender shall transmit the information set out in subsection (i) pertaining to such violent juvenile sexual offender to the TBI for inclusion on the SOR within forty-eight (48) hours of the offender's adjudication for the qualifying offenses set out in § 40-39-202(29).

40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions.

(a) The TBI shall maintain and make available a connection to the SOR for all criminal justice agencies with TIES internet capabilities, by which registering agencies shall enter original, current and accurate data required by this part. The TBI shall provide viewing and limited write access directly to the SOR through the TIES internet to registering agencies for the entry of record verification data, changes of residence, employment or other pertinent data required by this part and to assist in offender identification. Registering agencies should immediately, but in no case to exceed twelve (12) hours from registration, enter all data received from the offender as required by the TBI and § 40-39-203(i), into the TIES internet for the enforcement of this part by TBI, designated law enforcement agencies, TDOC, and private contractors with TDOC.

(b)

(1) Violent sexual offenders shall report in person during the months of March, June, September, and December of each calendar year, to the designated law enforcement agency, on a date established by such agency, to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information in the TBI registration form. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from the in-person reporting and fingerprinting, as otherwise provided by this part. At the time of the violent offender's initial registration or initial reporting date for the calendar year, the violent sexual offender shall pay the specified administrative costs, not to exceed one hundred fifty dollars ($150), one hundred dollars ($100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars ($50.00) shall be submitted by the registering agency to the TBI for maintenance, upkeep and employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from paying the administrative cost as otherwise provided by this part.

(2) At least once during the months of March, June, September, and December of each calendar year, all violent juvenile sexual offenders shall report in person to the offender's registering agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information transmitted to the TBI by the registering agency as defined in § 40-39-202. Offenders in custody shall register as set out in § 40-39-203(b)(1).

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form and to pay the specified administrative costs, not to exceed one hundred fifty dollars ($150), one hundred dollars ($100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars ($50.00) shall be submitted by the registering agency to the TBI for maintenance, upkeep and employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders whose initial registration occurs after the annual reporting period shall be required to pay the administrative costs at the time of the initial registration. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from the in-person reporting and fingerprinting and administrative cost as otherwise provided by this part. However, if an offender is released or discharged from a nursing home, assisted living facility or mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to the release or discharge, the offender shall, within forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

(d) Within three (3) days after the offender's verification, the designated law enforcement agency with whom the offender verified shall send by United States postal service or by electronic means the original signed TBI registration form containing information required by § 40-39-203(i) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other forms required by § 40-39-207 that are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(e) If a person required to register under this part is reincarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge or any other form of alternative sentencing, the offender shall immediately report the offender's status as a sexual offender or violent sexual offender to the facility where the offender is incarcerated or detained and notify the offender's appropriate registering agency, if different, that the offender is currently being detained or incarcerated. Registration, verification and tracking requirements for such persons are tolled during the subsequent incarceration. Within forty-eight (48) hours of the release from any subsequent reincarcerations, the offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration, verification and tracking requirements for such persons are tolled during the period of deportation. Within forty-eight (48) hours of the return to this state after deportation, the offender shall register with the appropriate designated law enforcement agency.

(f) Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities shall be exempted from the in-person

reporting, fingerprinting and administrative cost requirements; however, it shall be the responsibility of the offender, the offender's guardian, the person holding the offender's power of attorney or, in the absence thereof, the administrator of the facility, to report any changes in the residential status to TBI headquarters in Nashville by United States postal service. Further, if an offender is released or discharged from a nursing home, assisted living facility, mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to the release or discharge, the offender shall, within forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. The offenders who are considered homeless shall be required to report to their registering agency monthly. By the authority established in § 40-39-206(f), the TBI shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety.

(h) Each offender shall report to the designated law enforcement agency at least twenty-one (21) days before traveling out of the country; provided, that offenders who travel out of the country frequently for work or other legitimate purpose, with the written approval of the designated law enforcement agency, and offenders who travel out of the country for emergency situations shall report to the designated law enforcement agency at least twenty-four (24) hours before traveling out of the country.

40-39-205. Creation and distribution of forms — Acknowledgement forms.

(a) TBI registration forms shall be designed, printed and distributed by and at the expense of the TBI. These forms shall include instructions for compliance with this part and a statement of understanding and acknowledgment of those instructions to be signed by the offender. TBI registration forms shall be available from registering agencies, parole officers, probation officers and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b) It shall be the duty of the offender's designated registering agency, its representatives and designees, including any district attorney general's criminal investigator, to verify the accuracy and completeness of all information contained in the offender's SOR.

(c) The officer or employee responsible for supervising an offender who has been released on probation, parole or any other alternative to incarceration shall:

(1) Promptly obtain the offender's signed statement acknowledging that the named officer or employee has:

(A) Fully explained, and the offender understands, the registration, verification and tracking requirements and sanctions of this part and the current sex offender directives established by the department of correction;

(B) Provided the offender with a blank TBI registration form and assisted the offender in completing the form; and

(C) Obtained fingerprints, palm prints and photographs of the offender, and vehicles and vessels, as determined necessary by the agency;

(2) Immediately, but in no case to exceed twelve (12) hours from registration, enter all data received from the offender, as required by the TBI and § 40-39-203(i), into the TIES internet. The officer or employee shall, within three (3) days, send by United States postal service or by electronic means the signed and completed TBI registration form to TBI headquarters in Nashville. The photographs of the offender, vehicles and vessels, and the fingerprints should also be sent by United States postal service within three (3) days, if not electronically submitted to TBI headquarters in Nashville. The registering agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(d) Not more than forty-eight (48) hours prior to the release of an offender from incarceration, with or without supervision, the warden of the correctional facility or the warden's designee, or sheriff of the jail or the sheriff's designee, shall obtain the offender's signed statement acknowledging that the official has fully explained, and the offender understands, the registration, verification and tracking requirements and sanctions of this part. If the offender is to be released with or without any type of supervision, the warden of the correctional facility or the warden's designee, or sheriff of the jail or the sheriff's designee, shall assist the offender in completing a TBI registration form. The warden or the warden's designee, or the sheriff or the sheriff's designee, shall also obtain fingerprints, palm prints and photographs of the offender, vehicles and vessels, as determined

necessary by the agency. The official shall send by United States postal service the signed and completed TBI registration form to TBI headquarters in Nashville within three (3) days of the release of the offender. The photographs of the offender, vehicles and vessels, and the fingerprints should also be sent by United States postal service within three (3) days, if not electronically submitted to TBI headquarters in Nashville.

(e) If the offender is placed on unsupervised probation, the court shall fully explain to the offender, on the court record, the registration, verification and tracking requirements and sanctions of this part. The court shall then order the offender to report within forty-eight (48) hours, in person, to the appropriate registering agency to register as required by this part.

(f) Through press releases, public service announcements or through other appropriate public information activities, the TBI shall attempt to ensure that all offenders, including those who move into this state, are informed and periodically reminded of the registration, verification and tracking requirements and sanctions of this part.

40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders.

(a) Using information received or collected pursuant to this part, the TBI shall establish, maintain and update a centralized record system of offender registration, verification and tracking information. The TBI may receive information from any credible source and may forward the information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification and tracking information to the identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with this part, pursuant to the powers enumerated in subsection (e), the TBI shall make the information available through the SOR to the district attorney general, designated law enforcement agencies and the probation officer, parole officer or other public officer or employee assigned responsibility for the offender's supervised release.

(c) Notwithstanding any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of institutions of higher education, courts, probation and parole, the district attorneys general and their employees and other public officers and employees assigned responsibility for offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions and conduct pursuant to this part.

(d) For any offender convicted in this state of a sexual offense or violent sexual offense, as defined by this part, that requires the offender to register pursuant to this part, the information concerning the registered offender set out in subdivisions (d)(1)-(16) shall be considered public information. If an offender from another state establishes a residence in this state and is required to register in this state pursuant to § 40-39-203, the information concerning the registered offender set out in subdivisions (d)(1)-(16) shall be considered public information regardless of the date of conviction of the offender in the other state. In addition to making the information available in the same manner as public records, the TBI shall prepare and place the information on the state's internet home page. This information shall become a part of the Tennessee internet criminal information center when that center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

(1) The offender's complete name, as well as any aliases, including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise, including pseudonyms and ethnic or tribal names;

(2) The offender's date of birth;

(3) The sexual offense or offenses or violent sexual offense or offenses of which the offender has been convicted;

(4) The primary and secondary addresses, including the house number, county, city and ZIP code in which the offender resides;

(5) The offender's race and gender;

(6) The date of last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number and issuing state or any state or federal issued identification number;

(9) The offender's parole or probation officer;

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student;

(11) The text of the provision of law or laws defining the criminal offense or offenses for which the offender is registered;

(12) A physical description of the offender, including height, weight, color of eyes and hair, tattoos, scars and marks;

(13) The criminal history of the offender, including the date of all arrests and convictions, the status of parole, probation or supervised release, registration status and the existence of any outstanding arrest warrants for the sex offender;

(14) The address of the offender's employer or employers;

(15) The license plate number and a description of all of the offender's vehicles; and

(16) Whether the offender is an offender against children, as defined by § 40-39-202.

(e) For any violent juvenile sexual offender who is adjudicated for a violent juvenile sexual offense, the information concerning the violent juvenile sexual offender set out in (d) shall be confidential, except as otherwise provided under § 40-39-207(j) and any other provision of law.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer this section. These rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.

(a)

(1) Except as otherwise provided in subdivision (a)(3), unless a plea was taken in conjunction with § 40-35-313, no sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville. If the person is required to register under this part due to a plea taken in conjunction with § 40-35-313, an offender required to register under this part may file a request for termination of registration upon successful completion of a term of judicial diversion pursuant to § 40-35-313 and upon receiving an order from a court of competent jurisdiction signifying the successful completion of the term of judicial diversion and the dismissal of charges pursuant to § 40-35-313.

(2) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-101, and the offense being expunged is an offense eligible for expunction under § 40-32-101, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

(3) Notwithstanding subdivision (a)(1), no sooner than three (3) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than three (3) years after discharge from incarceration without supervision, an offender required to register under this part due to conviction under § 39-16-408 may file a request for termination of registration requirements with TBI headquarters in Nashville.

(4) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction grants an offender's petition, filed pursuant to § 40-39-218, for termination of the requirements imposed by this part based on the offender's status as a victim of a human trafficking offense, as defined by § 39-13-314, sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601, the Tennessee bureau of investigation shall, immediately upon receiving a copy of the order, remove the offender from the SOR.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(c) The TBI shall remove an offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part if it is determined that:

(1) The offender has successfully completed a term of judicial diversion, pursuant to § 40-35-313, for an offense under § 39-13-505 or § 39-13-506(a) or (b), for which the person is required to register under this part;

(2) The offender previously entered a term of judicial diversion, pursuant to § 40-35-313, prior to May 24, 2019, for the offense for which the person is required to register under this part and subsequently successfully completes the term of judicial diversion; or

(3) The offender has not been convicted of any additional sexual offense or violent sexual offense during the ten-year period and the offender has substantially complied with this part and former part 1 of this chapter [repealed].

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g)

(1) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(2) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(A) Has one (1) or more prior convictions for a sexual offense, as defined in § 40-39-202, regardless of when the conviction or convictions occurred;

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202; or

(C) Has been convicted of an offense in which the victim was a child of twelve (12) years of age or less.

(3) For purposes of subdivision (g)(2)(A):

(A) "Prior conviction" means that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a sexual offense prior to or at the time of committing another sexual offense;

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a sexual offense. If an offense in a jurisdiction other than this state is not identified as a sexual offense in this state, it shall be considered a prior conviction if the elements of the offense are the same as the elements for a sexual offense; and

(C) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). A sexual offense shall be considered as having been committed after a separate period of incarceration or supervision if the sexual offense is committed while the person was:

(i) On probation, parole or community correction supervision for a sexual offense;

(ii) Incarcerated for a sexual offense;

(iii) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a sexual offense; or

(iv) On escape status from any correctional institution when incarcerated for a sexual offense.

(h)

(1) Any offender required to register pursuant to this chapter because the offender was convicted of the offense of statutory rape under § 39-13-506 and the offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville, if the offender would not be required to register if the offense was committed on or after July 1, 2006.

(2) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender would not be required to register if the offender committed the same offense on or after July 1, 2006. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(3) If it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses and that the offender has substantially complied with this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the period of registration or has not substantially complied with this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in this state, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(i)

(1)

(A) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a sexual offense, the person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from August 1, 2007, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(1)(A).

(2) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a violent sexual offense, the person shall continue to comply with the registration, verification and tracking requirements for the life of that offender.

(3)

(A) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, for an offense now classified as a sexual offense, the person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from July 1, 2010, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(3)(A).

(C) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, for an offense now classified as a violent sexual offense, the person shall continue to comply with the registration, verification and tracking requirements for the life of that offender.

(4) Unless otherwise authorized by law, a person required to register as any form of a sexual offender in this state due to a qualifying offense from another jurisdiction which is classified as a sexual offense in this state may apply for removal from the registry pursuant to subdivision (a)(1) following the later of:

(A) Ten (10) years from the date of termination of active supervision or probation, parole or any other alternative to incarceration, or after discharge from incarceration without supervision; or

(B) Five (5) years after being added to the Tennessee sexual offender registry.

(j)

(1) Violent juvenile sexual offenders who are currently registered as such and who receive a subsequent adjudication in juvenile court or a court having juvenile court jurisdiction for one of the offenses listed in § 40-39-202(29) or a crime that if committed in this state would require registration shall be required to register for life. Information concerning the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(29), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information once the offender reaches the offender's eighteenth birthday.

(2) Violent juvenile sexual offenders who are currently registered as such and who, upon reaching the age of eighteen (18), are convicted of a sexual offense as set out in § 40-39-202(20) or a violent sexual offense as set out in § 40-39-202(31) shall be required to register for life. Information concerning the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(20) or § 40-39-202(31), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information.

(3) Violent juvenile sexual offenders who reach the age of twenty-five (25), and who have not been adjudicated or convicted of a subsequent qualifying offense as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C), shall be eligible for termination from the SOR. Upon reaching the age of twenty-five (25), the violent juvenile sexual offender may apply for removal from the SOR by use of a form created by the TBI. The form will contain a statement, sworn to by the offender under the penalty of perjury, that the offender has not been convicted of or adjudicated delinquent of any of the offenses set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C).

(4) TBI shall also conduct fingerprint-based state and federal criminal history checks to determine whether the violent juvenile sexual offender has been convicted of or adjudicated on any prohibited crimes as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(2)(C), including crimes committed in other jurisdictions.

(5) If the violent juvenile sexual offender has not been convicted or adjudicated delinquent in any of the prohibited crimes, the offender shall be removed from the sex offender registry.

40-39-208. Violations — Penalty — Venue — Providing records for prosecution.

(a) It is an offense for an offender to knowingly violate any provision of this part. Violations shall include, but not be limited to:

(1) Failure of an offender to timely register or report;

(2) Falsification of a TBI registration form;

(3) Failure to timely disclose required information to the designated law enforcement agency;

(4) Failure to sign a TBI registration form;

(5) Failure to pay the annual administrative costs, if financially able;

(6) Failure to timely disclose status as a sexual offender or violent sexual offender to the designated law enforcement agency upon reincarceration;

(7) Failure to timely report to the designated law enforcement agency upon release after reincarceration;

(8) Failure to timely report to the designated law enforcement agency following reentry in this state after deportation;

(9) Failure to timely report to the offender's designated law enforcement agency when the offender moves to another state; and

(10) Conviction of a new sexual offense, violent sexual offense, or violent juvenile sexual offense.

(b) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(c) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350) and imprisonment for not less than ninety (90) days.

(d) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600) and imprisonment for not less than one hundred eighty (180) days.

(e) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100) and imprisonment for not less than one (1) year.

(f) A violation of this part is a continuing offense. If an offender is required to register pursuant to this part, venue lies in any county in which the offender may be found or in any county where the violation occurred.

(g) In a prosecution for a violation of this section, upon the request of a district attorney general, law enforcement agency, the department of correction or its officers or a court of competent jurisdiction and for any lawful purpose permitted by this part, the records custodian of SOR shall provide the requesting agency with certified copies of specified records being maintained in the registry.

(h) The records custodian providing copies of records to a requesting agency, pursuant to subsection (g), shall attach the following certification:

I, , HAVING BEEN APPOINTED BY THE DIRECTOR OF THE TENNESSEE BUREAU OF INVESTIGATION AS CUSTODIAN OF THE BUREAU'S CENTRALIZED RECORDS SYSTEM OF SEXUAL AND VIOLENT SEXUAL OFFENDERS, REGISTRATION, VERIFICATION AND TRACKING INFORMATION (SOR), HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECORDS MAINTAINED WITHIN SAID REGISTRY

SIGNATURE TITLE DATE
AFFIX THE BUREAU SEAL HERE

(i) Sexual offender, violent sexual offender and violent juvenile sexual offender registry files and records maintained by the TBI may be digitized. A digitized copy of any original file or record in the TBI's possession shall be deemed to be an original for all purposes, including introduction into evidence in all courts or administrative agencies.

(j) Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this part commits a delinquent act as defined by the juvenile code.

40-39-209. Removing records from SOR

Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent

jurisdiction as part of an expunction order pursuant to § 40-32-101, so long as the offense is eligible for expunction under § 40-32-101.

40-39-210. Death of offender

Upon receipt of notice of the death of a registered offender, verified through the registering agency or TBI officials by obtaining a copy of the offender's certificate of death, by checking the social security death index or by obtaining a copy of an accident report, the TBI shall remove all data pertaining to the deceased offender from the SOR.

40-39-211. Residential and work restrictions.

(a)

(1) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender as defined in § 40-39-202, shall knowingly establish a primary or secondary residence or any other living accommodation or knowingly accept employment within one thousand feet (1,000′) of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center, or public athletic field available for use by the general public.

(2) For purposes of this subsection (a), "playground" means any indoor or outdoor facility that is intended for recreation of children and owned by the state, a local government, or a not-for-profit organization, and includes any parking lot appurtenant to the indoor or outdoor facility.

(b) No sexual offender, violent sexual offender, or violent juvenile sexual offender, as those terms are defined in § 40-39-202, shall knowingly:

(1) Reside within one thousand feet (1,000′) of the property line on which the offender's former victims or the victims' immediate family members reside;

(2) Come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law; or

(3) Contact any of the offender's former victims or the victims' immediate family members without the consent of the victim or consent of the victim's parent or guardian if the victim is a minor being contacted by telephone, in writing, by electronic mail, internet services or any other form of electronic communication, unless otherwise authorized by law.

(c) While mandated to comply with the requirements of this part, no sexual offender or violent sexual offender, whose victim was a minor, shall knowingly reside or conduct an overnight visit at a residence in which a minor resides or is present. Notwithstanding this subsection (c), the offender may reside, conduct an overnight visit, or be alone with a minor if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law;

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender; or

(3) The offender has been convicted of a sexual offense or violent sexual offense the victim of which was a child under twelve (12) years of age.

(d)

(1) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(A) Be upon or remain on the premises of any building or grounds of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in this state when the offender has reason to believe children under eighteen (18) years of age are present;

(B) Stand, sit idly, whether or not the offender is in a vehicle, or remain within one thousand feet (1,000′) of the property line of any building owned or operated by any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in

this state when children under eighteen (18) years of age are present, while not having a reason or relationship involving custody of or responsibility for a child or any other specific or legitimate reason for being there; or

(C) Be in any conveyance owned, leased or contracted by a school, licensed day care center, other child care facility or recreation center to transport students to or from school, day care, child care, or a recreation center or any related activity thereof when children under eighteen (18) years of age are present in the conveyance.

(2) Subdivision (d)(1) shall not apply when the offender:

(A) Is a student in attendance at the school;

(B) Is attending a conference with school, day care, child care, park, playground or recreation center officials as a parent or legal guardian of a child who is enrolled in the school, day care center, other child care center or of a child who is a participant at the park, playground or recreation center and has received written permission or a request from the school's principal or the facility's administrator;

(C) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(D) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian who has provided written notice of the parent's offender status to the school's principal or a school administrator upon enrollment.

(3) The exemption provided in subdivision (d)(2)(B) shall not apply if the victim of the offender's sexual offense or violent sexual offense was a minor at the time of the offense and the victim is enrolled in the school, day care center, recreation center or other child care center that is participating in the conference or other scheduled event.

(e) Changes in the ownership or use of property within one thousand feet (1,000′) of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(f) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(g)

(1) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350) and imprisonment for not less than ninety (90) days.

(2) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600) and imprisonment for not less than one hundred eighty (180) days.

(3) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100) and imprisonment for not less than one (1) year.

(4) A violation of this part due solely to a lack of the written permission required pursuant to subdivision (d)(2) shall be punishable by fine only.

(h)

(1)

(A) While mandated to comply with the requirements of this part, it is an offense for three (3) or more sexual offenders, as defined in § 40-39-202, or violent sexual offenders, as defined in § 40-39-202, or a combination thereof, to establish a primary or secondary residence together or inhabit the same primary or secondary residence at the same time.

(B) Each sexual offender or violent sexual offender who establishes or inhabits a primary or secondary residence in violation of subdivision (h)(1)(A) commits a violation of this section.

(C) Subdivision (h)(1)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(2)

(A) No person, corporation, or other entity shall knowingly permit three (3) or more sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or a combination thereof, while such offenders are mandated to comply with the requirements of this part, to establish a primary or secondary residence in any house, apartment or other habitation, as defined by § 39-14-401(1)(A), owned or under the control of such person, corporation, or entity.

(B) Subdivision (h)(2)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(3) This subsection (h) shall not apply to any residential treatment facility in which more than three (3) sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or combination thereof, reside following sentencing to such facility by a court or placement in such facility by the board of parole for the purpose of in-house sexual offender treatment; provided, the treatment facility complies with the guidelines and standards for the treatment of sexual offenders established by the sex offender treatment board pursuant to § 39-13-704.

(i) The restrictions set out in subsections (a)-(d) and (k) shall not apply to a violent juvenile sexual offender required to register under this part unless otherwise ordered by a court of competent jurisdiction.

(j) Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this section commits a delinquent act as defined by the juvenile code.

(k)

(1) As used in this subsection (k), unless the context otherwise requires:

(A)

(i) "Alone with" means one (1) or more offenders covered by this subsection (k) is in the presence of a minor or minors in a private area; and

(a) There is no other adult present in the area;

(b) There is another adult present in the area but the adult is asleep, unconscious, or otherwise unable to observe the offender and the minor or minors;

(c) There is another adult present in the area but the adult present is unable or unwilling to come to the aid of the minor or minors or contact the proper authorities, if necessary; or

(d) There is another adult present in the area but the adult is also a sexual offender or violent sexual offender mandated to comply with the requirements of this part;

(ii) If the offender is in a private area where the offender has the right to be, the offender is not "alone with" a minor or minors if the offender is engaged in an otherwise lawful activity and the presence of the minor or minors is incidental, accidental, or otherwise unrelated to the offender's lawful activity; and

(B)

(i) "Private area" means in or on any real or personal property, regardless of ownership, where the conduct of the offender is not readily observable by anyone but the minor or minors alone with the offender;

(ii) If the private area contains multiple rooms, such as a hotel, motel, or other place of temporary lodging, any room, rooms, or other area that the offender occupies with a minor or minors and that otherwise meets the requirements of this definition shall be considered a private area.

(2) Unless otherwise permitted by subsection (c), while mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall be alone with a minor or minors in a private area.

40-39-212. Registration requirement.

(a) Upon the court's acceptance of a defendant's entry of a plea of guilty or a finding of guilt by a jury or judge after trial, and, notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or

practices a vocation, establishes a primary or secondary residence or becomes a student in this state and who enters a plea of guilty to a sexual offense as defined by § 40-39-202 or a violent sexual offense as defined by § 40-39-202, shall be required to register with a registering agency.

(b) Notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence or becomes a student in this state and who enters a plea of guilty to an offense in another state, county or jurisdiction that may result in a conviction of a sexual offense as defined by § 40-39-202 or a violent sexual offense as defined by § 40-39-202, shall be required to register with a registering agency.

(c) Upon the court's acceptance of a defendant's entry of a plea of guilty, and notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant from another state who enters a plea of guilty to an offense in this state that may result in a conviction of a sexual offense as defined by § 40-39-202 or a violent sexual offense as defined by § 40-39-202, shall be required to register with a registering agency.

(d) This part shall apply to offenders who received diversion under § 40-35-313 or its equivalent in any other jurisdiction.

40-39-216. Restricting access to public library.

(a) Public library boards shall have the authority to reasonably restrict the access of any person listed on the sexual offender registry. Such authority may be delegated by the board to a library administrator.

(b) In determining the reasonableness of the restrictions, the board shall consider the following criteria:

(1) The likelihood of children being present in the library at the times and places to be restricted;

(2) The age of the victim of the offender; and

(3) The chilling effect of the use of the library by other patrons if the offender is not restricted.

(c) Nothing in this section shall prevent the board from imposing a total ban of the offender's access to a public library so long as the criteria in subsection (b) are considered.

(d) The restrictions of this section shall be effective upon the mailing of notice to the address of the offender as listed on the sexual offender registry. The notice shall state with specificity, the time and space restrictions. The board, or if so delegated, the library administrator, shall state in the notice that the criteria in subsection (b) have been considered.

(e) A registered sex offender who enters upon the premises of a public library in contravention of the restrictions five (5) days after mailing of the notice may, at the discretion of the library administrator, be prosecuted for criminal trespass pursuant to § 39-14-405.

40-39-218. Termination of registration requirements based on status as victim of human trafficking, sexual offenses or domestic abuse.

(a) A person who is mandated to comply with the requirements of this part, based solely upon a conviction for aggravated prostitution, under § 39-13-516, may petition the sentencing court for termination of the registration requirements based on the person's status as a victim of a human trafficking offense, as defined by § 39-13-314, a sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601.

(b)

(1) Upon receiving a petition, the court shall, at least thirty (30) days prior to a hearing on the petition, cause the office of the district attorney general responsible for prosecuting the person to be notified of the person's petition for release from the registration requirements. Upon being notified, the district attorney general shall conduct a criminal history check on the person to determine if the person has been convicted of a sexual offense or violent sexual offense during the period the person was required to comply with the requirements of this part. The district attorney general shall report the results of the criminal history check to the court, together with any other comments the district attorney general may have concerning the

person's petition for release. The district attorney general may also appear and testify at the hearing in lieu of, or in addition to, submitting written comments.

(2) Notwithstanding subdivision (b)(1), a petition for termination of the registration requirements mandated by this part may be filed at any time following a verdict or finding of guilty. If the petition is filed prior to the sentencing hearing required by § 40-35-209, the court shall combine the hearing on the petition with the sentencing hearing. When the petition is filed prior to the sentencing hearing, the thirty-day notice requirement imposed pursuant to subdivision (b)(1) shall not apply; provided, however, that the district attorney general's office shall be given notice of the petition and reasonable time to comply with the requirements of subdivision (b)(1).

(c)

(1) If the report of the district attorney general indicates that the petitioner has been convicted of a sexual offense or violent sexual offense while mandated to comply with the requirements of this part, the court shall deny the petition without conducting a hearing.

(2) If the report of the district attorney general indicates that the petitioner has not been convicted of a sexual offense or violent sexual offense while mandated to comply with the requirements of this part, the court shall conduct a hearing on the petition. At the hearing, the court shall call such witnesses, including, if applicable, an examining psychiatrist or licensed psychologist with health service designation or the prosecuting district attorney general, as the court deems necessary to reach an informed and just decision on whether the petitioner should be released from the requirements of this part. The petitioner may offer such witnesses and other proof at the hearing as is relevant to the petition.

(3) If a petition for release from the requirements of this part is denied by the court, the person may not file another such petition for a period of three (3) years.

(4) If the court determines that the petitioner has been a victim of a human trafficking offense, as defined by § 39-13-314, sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601, and that the person should not be required to comply with the requirements of this part, the court shall grant the petition.

(d) Upon the court's order granting the petition, the petitioner shall file a request for termination of registration requirements with the Tennessee bureau of investigation headquarters in Nashville, pursuant to § 40-39-207.

40-39-301. Part definitions.

As used in this part, unless the context otherwise requires:

(1) “Serious offender” means any person who is convicted in this state, on or after July 1, 2004, of any offense that may cause “serious bodily injury” as defined in § 39-11-106. “Serious offender” includes any person who is convicted in any other jurisdiction of any offense that would constitute a serious offense as defined in this part. “Serious offender” also includes any person who has been released on probation or parole following a conviction for any serious offense, as defined in this part, to the extent that the person continues to be subject to active supervision by the department of correction;

(2) “Sexual offense” means any of the crimes enumerated in § 40-39-202(20), including specifically:

(A) The commission of any act that constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Sexual exploitation of a minor, under § 39-17-1003;

(vii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(viii) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(ix) Incest, under § 39-15-302;

(x) Rape of a child, under § 39-13-522;

(xi) Sexual battery by an authority figure, under § 39-13-527;

(xii) Solicitation of a minor, under § 39-13-528;

(B) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within subdivision (2)(A); or

(C) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in subdivision (2)(A); and

(3) "Violent sexual offender" means any person who is convicted in the state, on or after July 1, 2004, of any sexual offense, as defined in subdivision (2) or § 40-39-202; or any person who is convicted in any other jurisdiction of any offense that would constitute a sexual offense in Tennessee. "Violent sexual offender" also includes any person who has been released on probation or parole following a conviction for any sexual offense, as defined in subdivision (2), to the extent that the person continues to be subject to active supervision by the department of correction as defined in law. For the purposes of this section, "violent sexual offender" may include offenders whose sexual offense was reduced by virtue of a plea agreement.

IX. Criminal Victims' Compensation.

29-13-102. Chapter definitions.

As used in this chapter and § 40-24-107, unless the context otherwise requires:

(1) "Child" means any individual, adopted or natural born, entitled to take as a child under the laws of this state by intestate succession from the parent whose relationship is involved and also includes a stepchild;

(2) "Claimant" means any person or persons filing a claim for compensation under this chapter on such person's or persons' own behalf, the guardian of a victim if the victim is a minor, the legal representative of the estate of a deceased victim, or the dependents of the victim;

(3) "Commission" means the Tennessee claims commission created pursuant to § 9-8-301;

(4) "Court" means the circuit courts of the state of Tennessee, for the purposes of filing a claim, and any court of the state which has the jurisdiction to try a crime against person or property, for the purpose of assessing the costs provided for in § 40-24-107, except general sessions courts or municipal courts may not impose such costs;

(5) "Dependents" means such relatives of a deceased victim as were receiving substantial support or needed services from the victim at the time of the victim's death, and includes the child of such victim born after such victim's death;

(6) "Division" means the division of claims and risk management created pursuant to § 9-8-401;

(7) "Family," when used with reference to a person, includes:

(A) Any person related to such person within the third degree of consanguinity or affinity; or

(B) Any person living in the same household as such person;

(8) "Guardian" or "legal guardian" means a person having the legal authority to provide for the care, supervision, and control of a minor child as established by law or court order;

(9) "Minor" means any person who has not attained the age of eighteen (18) years;

(10) "Offender" means a person who has or is alleged to have committed a crime;

(11) "Out of pocket expenses" means unreimbursed or unreimbursable expenditures or indebtedness reasonably incurred for medical care or other services reasonably necessary as a result of the personal injury or death upon which a claim is based;

(12) "Relative" means a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister and a spouse's parents or stepparents; and

(13) "Victim" means a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in § 29-13-104.

29-13-103. Burden of proof — Documentation.

(a) The claimant has the burden of presenting to the division all facts necessary in determining whether the claimant is entitled to compensation under this part. No claimant shall be entitled to compensation unless the claimant proves by a preponderance of the evidence every requirement under this part for entitlement to compensation, including, but not limited to, the following:

(1) The occurrence of an offense as defined in § 29-13-104;

(2) The offense proximately caused personal injury to or death of the victim;

(3) The claimant is eligible for compensation pursuant to § 29-13-105;

(4) The claimant has fully cooperated with the police and the district attorney general in the investigation and prosecution of the offender;

(5) The amount of losses or expenses incurred by the claimant that are eligible for reimbursement pursuant to §§ 29-13-106 and 29-13-107;

(6) If the claim is based upon the death of the victim and an award in excess of funeral and burial expenses is being sought, that the claimant was a dependent of the victim within the meaning of § 29-13-102(5); and

(7) The victim or a member of the victim's family reported the offense to the proper law enforcement authorities within the time prescribed in § 29-13-108(a).

(b) The claimant must present written documentation to establish the facts required by subsection (a). Such documentation shall include, where appropriate, all medical and funeral bills, lost wage verifications, W-2 forms, death and birth certificates, and the incident report from the appropriate law enforcement agency.

29-13-104. Offenses to which compensation applies.

Payment of compensation shall be made to the claimant in accordance with this chapter for personal injury to or death of the victim which resulted from:

(1) An act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime under state or federal law; provided, that an injury or death inflicted through the use of a motor vehicle or watercraft shall be eligible for compensation under this chapter only under the following circumstances:

(A) Evidence submitted clearly shows that the operator of the motor vehicle or watercraft directly causing the death or injury was acting with criminal intent to intentionally inflict injury or death;

(B) The operator of the motor vehicle or watercraft directly causing the death or injury was operating the motor vehicle or watercraft as is prohibited by § 55-10-401; provided, that claims for any personal injury or loss alleged to have been incurred as a result of the personal injury or death of a passenger in such a motor vehicle or watercraft shall be subject to § 29-13-119; or

(C) The crime involved the failure to stop at the scene of an accident in violation of § 55-10-101, which directly resulted in serious bodily injury or death to the victim; and the evidence shows that the operator of the motor vehicle knew or reasonably should have known that death or serious bodily injury had occurred.

(2) An attempt to prevent or the actual prevention of a crime or an attempted crime under state or federal law in this state which the victim reasonably believed had occurred or was about to occur;

(3) The apprehending of an individual who had committed a felony in the presence of the victim, if, under the circumstances, the victim could have reasonably believed that a felony had occurred; or

(4) Any of the foregoing acts committed or taken in another state if the victim was a resident of this state at the time the crime or act occurred and the claimant's request for compensation from the state in which the crime or act occurred is not honored.

29-13-105. Persons eligible for compensation.

(a) Except as otherwise provided, the following person or persons shall be eligible for compensation pursuant to this chapter:

(1) A victim of a crime;

(2) In the case of the death of the victim, a dependent of the victim;

(3) In case of the death of a victim, where the compensation is for unreimbursed or unreimbursable mental health counseling or treatment made necessary by the death of the victim, a relative of the victim;

(4) In the case of the death of the victim, where the compensation is for unreimbursed or unreimbursable funeral or burial expenses, to the legal representative of the estate of the victim, or if no estate of the victim is opened, to a relative of the victim as defined in § 29-13-102;

(5) In the case of the personal injury of the victim, where the compensation is for expenses incurred by any person responsible for the maintenance of that victim, to that person;

(6) In the case of a sexually-oriented crime committed against a victim who is under eighteen (18) years of age, where the compensation is for unreimbursed or unreimbursable mental health counseling or treatment made necessary by the sexually-oriented crime, any sibling or non-offending custodial parent of the victim, or both; or

(7) In the case of domestic assault committed against the victim, where the compensation is for unreimbursed or unreimbursable mental health counseling or treatment made necessary by the crime, any child of the victim who witnesses the crime and who is under eighteen (18) years of age.

(b) A person who is criminally responsible for the crime upon which a claim is based, or an accomplice of such person, or anyone who has contributed to the crime in any respect, shall not be eligible to receive an award with respect to a claim under this chapter.

(c) No compensation shall be awarded a victim who was, at the time of the personal injury or death, a member of the offender's family, if it is determined that any benefit would accrue, either directly or indirectly, to the offender. This subsection (c) shall not be construed to automatically disqualify a victim who was a member of the offender's family at the time of the injury or death.

(d) A person who has been convicted of an offense under federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense shall not be eligible to receive an award with respect to a claim under this chapter. This subsection (d) shall not apply until the date on which the United States attorney general, in consultation with the director of the administrative office of the United States courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer

federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law.

29-13-106. Losses or expenses reimbursable.

(a) Payment of compensation under this chapter shall be ordered for losses or expenses as defined in this section only upon submission of written documentation which clearly shows that such losses and expenses were actually and reasonably incurred by the claimant. The burden of proof of losses and expenses shall be upon the claimant. The payment of compensation under this chapter shall be awarded for:

(1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including, but not limited to, actual expenditures of moneys for or indebtedness resulting from medical services, hospital services, funeral and burial expenses;

(2) "Permanent partial disability" or "permanent total disability" as defined in § 29-13-107;

(3) Expenses actually and reasonably incurred as the result of the claimant traveling to and from the trial of the defendant or defendants alleged to have committed an offense as defined in § 29-13-104, regardless of whether the claimant is called as a witness, and expenses actually and reasonably incurred as the result of the claimant traveling to and from appellate, post-conviction or habeas corpus proceedings resulting from the trial of a defendant or defendants alleged to have committed a compensable offense as defined in § 29-13-104. Any award made under the preceding sentence to a claimant shall not exceed a cumulative total of one thousand two hundred fifty dollars ($1,250) for all such travel. For the purposes of subdivision (a)(3) "claimant" means the victim, the guardian of a victim if the victim is a minor, the legal representative of the estate of a deceased victim, or relative of the victim as defined in § 29-13-102. As used in the preceding sentence, "legal representative of the estate of a deceased victim" shall not be construed or implemented to include any attorney who, for a fee, serves as legal representative of the estate of such victim. In no case shall compensation be awarded under this subdivision (a)(3) to more than four (4) claimants as a result of the "same criminal act" as defined in subsection (e). Further, no award shall be made to a claimant under this subdivision (a)(3) if the claimant is otherwise eligible for the payment of travel expenses by the state or any county of this state as a result of the claimant attending the trial as a witness;

(4) Reasonable out-of-pocket expenses incurred for cleaning supplies, equipment rental and labor needed to clean the scene of a homicide, sexual assault or aggravated assault, if the scene was the residence of the victim or a relative of the victim as defined in § 29-13-102. "Cleaning the scene" means to remove, or attempt to remove, from the crime scene blood, dirt, stains or other debris caused by the crime or the processing of the crime scene;

(5) Pecuniary loss to the dependents of a deceased victim;

(6) Any other pecuniary loss, including lost wages, as defined in § 29-13-107, resulting from the personal injury or death of the victim that is determined to be reasonable;

(7) The victim's reasonable moving expenses, storage fees and fees for transfer of utility service if the move is a direct result of an assault committed upon such victim at the victim's residence, provided that the victim shall not receive compensation for more than two (2) moves resulting from the assault; and

(8) Reasonable costs of cleaning, repairing or replacing eyeglasses and hearing aids owned by the victim that were damaged or destroyed by the crime or the processing of the crime scene, and the reasonable costs of repairing or replacing personal property owned by the victim or a relative of the victim as defined in § 29-13-102 that was damaged or destroyed in processing the scene of a homicide, sexual assault or aggravated assault if the scene was the residence of the victim or the relative of the victim who owned the property.

(b) In no case will any compensation be awarded for any damage to real or personal property, except as provided in subdivision (a)(8). For the purpose of this section, "dental devices", "artificial prosthetic devices" and "medically related devices" are not considered personal property.

(c) No compensation shall be awarded for any personal injury or loss alleged to have been incurred as a result of pain and suffering, except for victims of the crime of rape and victims of crime involving sexual deviancy, including minors who are victims of the crimes contained in §§ 39-13-502 — 39-13-505, 39-12-101, 39-13-522, 39-15-302, 39-17-902, and 39-17-1003 — 39-17-1005, and/or any attempt, conspiracy or solicitation to commit such offenses.

(d) Except as provided in subdivision (a)(3), no award shall be made unless the claimant has incurred a minimum out of pocket loss of one hundred dollars ($100) or has lost at least two (2) continuous weeks earnings or support, unless it is determined that the interest of justice would not be served by such a limitation.

(e) No compensation shall be awarded on account of the same criminal act in an amount in excess of thirty thousand dollars ($30,000), except as provided in subsection (h). All awards granted under subsection (a) shall be aggregated in determining this amount. For the purposes of this chapter, where a victim is injured as a result of two (2) or more criminal acts that occur:

(1) Sequentially, but involve the same criminal or group of criminals, and the same victim or group of victims; and

(2) The victim or victims remain in the presence or under the control of the criminal or criminals, then the injuries shall be deemed to have resulted from a single criminal act. For the purposes of this chapter, where a minor is the victim of crimes listed in subsection (c), and there are multiple occurrences of one (1) or more of these listed crimes by a single criminal over a period of time, then such injuries shall be deemed to have resulted from a single criminal act.

(f)

(1) Any award shall be reduced by the amounts of payment already received or any amounts which claimant is legally entitled to receive as a result of the injury:

(A) From or on behalf of the offender;

(B) From any other public or private source; or

(C) As an emergency award pursuant to § 29-13-114.

(2) It is the intent of this subsection (f) to prohibit double recoveries by criminal victims, but it shall not be construed to prohibit recovery of compensation under this chapter if the recovery from the sources set forth in subdivisions (f)(1)(A) and (B) is insufficient to reimburse the victim for total compensable injuries as set forth in this chapter. Recoveries under subdivisions (f)(1)(A) and (B) shall be considered as primary indemnification, and recoveries under subsection (a) shall be limited to compensating for injuries over and above any recoveries under subdivisions (f)(1)(A) and (B). In claims involving the death of a victim, the proceeds from any life insurance contracts payable to the victim's dependent or dependents making the claim for compensation shall not be considered a source of reimbursement.

(g) If two (2) or more persons are entitled to compensation as a result of the death of the victim, amounts shall be apportioned among claimants in proportion to their loss.

(h) It is the intent of the general assembly that the maximum award pursuant to subsection (e) equal no less than one hundred five percent (105%) of the national average of the maximum compensation award provided by the fifty (50) states within the United States, the District of Columbia and the United States Virgin Islands. No later than October 1 of each year, the treasurer shall compare the maximum award limit for this program with the average of the maximum award limits of the other states; provided, however, that the other states have a maximum award limit which is ascertainable or set in a manner similar to that of Tennessee. In the event that any of the states or territories do not have an overall maximum award, the treasurer shall eliminate that state or territory from comparison. If the treasurer determines that the maximum is less than one hundred five percent (105%) of the national average, the treasurer shall adjust the maximum award to an amount equal to one hundred five percent (105%) of the national average; provided, however, that the maximum award shall be rounded up to the nearest one hundred dollars ($100). Any adjustment made pursuant to this provision shall be effective on July 1 of the next fiscal year and shall apply to claims filed for crimes occurring on or after such date. The treasurer shall make any adjustment to the maximum award by rule promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

29-13-107. Standards for determining amount of compensation — Uniform application of chapter.

For purposes of determining the amount of compensation to be awarded under § 29-13-106, the following standards shall be utilized in order to ensure the uniform application of this chapter:

(1) Any award made for permanent partial or permanent total disabilities proximately caused by a violent crime is to be based upon those schedules of compensation allowable by the workers' compensation statutes, found in § 50-6-207, in effect at the

time of the commission of the act giving rise to such claim, for disabilities of a similar nature; provided, however, that the sixty-six and two-thirds percent (66⅔%) rate prescribed in the workers' compensation statutes shall not be used in determining the amount of any award hereunder. Instead, such rate shall be eighty-five percent (85%) of the claimant's average weekly wage. Any award made for lost wages proximately caused by a violent crime is to be based upon those schedules of compensation for temporary total disability allowable by the workers' compensation statutes, found in § 50-6-207, in effect at the time of the commission of the crime giving rise to such claim; provided, however, that the sixty-six and two-thirds percent (66⅔%) rate prescribed in the workers' compensation statutes shall not be used in determining the amount of any award hereunder. Instead, such rate shall be eighty-five percent (85%) of the claimant's average weekly wage. The board of claims is authorized to adopt such other standard as is required by federal law or regulation in order to qualify for matching federal funds under the Victims of Crime Act of 1984, compiled generally in 42 U.S.C. § 10601 et seq., if the board of claims determines that the federally required standard is both reasonable and in the financial interest of the criminal injuries program;

(2) Excepting claims for disabilities, death, or pain and suffering where the commission of a sexually-oriented crime is involved, awards are to be payable only for those pecuniary losses actually and reasonably incurred as the result of personal injuries received through the commission of a violent crime;

(3) Any award based on the pain and suffering experienced by a claimant victimized by a sexually-oriented crime is to be made in an amount deemed necessary and appropriate, not to exceed three thousand dollars ($3,000), taking into account the particular circumstances involved in such crime;

(4) Any award made for funeral and burial expenses shall not exceed six thousand dollars ($6,000);

(5) Any award made for expenses under § 29-13-106(a)(4) shall not exceed three thousand dollars ($3,000);

(6) Any award made for mental health counseling or treatment pursuant to § 29-13-105(a)(3), (a)(6) or (a)(7) shall be made in an amount deemed necessary and appropriate, not to exceed three thousand five hundred dollars ($3,500); and

(7) Except as otherwise provided in subdivision (6), any award made for medical or medical-related expenses, including, but not limited to, dental, chiropractic, hospital, physical therapy and nursing services, shall be made in an amount of seventy-five percent (75%) of the billed charges if there exists a sufficient amount left in the maximum award rate stipulated in § 29-13-106(e). If an insufficient amount exists in the maximum award rate to pay seventy-five percent (75%) of the billed charges, the billed charges shall be reduced to the amount remaining to bring the total compensation awarded on account of the criminal act to the maximum rate specified in § 29-13-106(e). Any medical provider or hospital that accepts payment under this part for medical or medical-related expenses or services shall accept the payment as payment in full and shall not bill any balance of those expenses to the victim or the claimant if the total payments made under this part to any such provider or hospital equal seventy-five percent (75%) of the billed charges. This subdivision (7) does not prohibit the medical provider or hospital from seeking reimbursement from the victim or the claimant for the difference, if any, between seventy-five percent (75%) of the billed charges and the amount paid by the division under this subdivision (7). This subdivision (7) does not apply to reimbursements for forensic medical examinations provided under § 29-13-118. Reimbursements for forensic medical examinations are governed by § 29-13-118.

29-13-108. Claims for compensation — Procedure.

(a) A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime upon which the claim is based or one (1) year after the death of the victim or one (1) year after any mental or physical manifestation or injury is diagnosed as a result of an act committed against a minor that would constitute a criminal offense under §§ 39-12-101, 39-13-502 — 39-13-505, 39-13-522, 39-15-302, 39-17-902, and 39-17-1003 — 39-17-1005, and/or any attempt, conspiracy or solicitation to commit such offenses; provided, that upon good cause shown, the time period for filing such claim may be extended either before or after the expiration of the filing period. No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, or a member of the victim's family, to the proper authorities; and in no case may an award be made where the law enforcement records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless, for good cause shown, it is found that the delay was justified. Failure of the victim to report a crime because:

(1) The victim is physically unable;

(2) The victim is a victim of sexual assault; or

(3) The victim is a victim of domestic abuse; may all constitute good cause.

(b) Each claim shall be filed with the division, in person or by mail. The division is authorized to prescribe and distribute forms for the filing of claims for compensation. The claim shall set forth the name of the victim and that of the claimant, if different than that of the victim, the address of the victim and/or claimant, the county wherein the crime is alleged to have occurred, the name, if known, of the alleged offender, a brief statement of the alleged crime, the date and time the alleged crime was reported to the police, the nature of compensation claimed and the race, sex, national origin and disability, if any, of the victim, and any other information required by the board of claims in order to satisfy federal regulations issued under the Victims of Crime Act of 1984.

(c) Within ten (10) days after receipt of the claim, the division shall notify the district attorney general. If a prosecution is pending or imminent for an offense arising out of the crime upon which the claim is based, the division or commission, whichever is applicable, shall suspend all action on the claim upon application of the district attorney general. In such event, the district attorney general shall notify the division or commission, whichever is applicable, within ten (10) days after completion of any such prosecution. Proceedings may further be suspended in the interest of justice if a civil action arising from such offense is pending or imminent. The division or commission, whichever is applicable, shall notify the claimant of any suspension under this subsection (c). A district attorney general who fails to supply the division with the report required in subsection (d) within one hundred eighty (180) days of the division's receipt of the claim shall be deemed to have waived the right to apply for a suspension under this section, unless good cause is shown for such failure.

(d) Unless the claim is suspended under subsection (c), the division shall investigate every claim for compensation and shall make every effort to honor or deny each claim within ninety (90) days of receipt of the claim. In investigating the claim, the division shall request from the appropriate district attorney general a report which shall present any information the district attorney general may have in support of or in opposition to the claim. If the claim is denied, the division shall so notify the claimant and inform the claimant of the reasons therefor and of such claimant's right to file the claim with the claims commission within ninety (90) days of the date of the denial notice. If the claim is honored, the division shall so notify the claimant and inform the claimant of the conditions of the settlement offer and of such claimant's right to file the claim with the claims commission within ninety (90) days of the date of the settlement notice if the conditions of the settlement offer are unacceptable. If the division fails to honor or deny the claim within the ninety-day settlement period, the division shall so notify the claimant and shall automatically transfer the claim to the administrative clerk of the commission; however, if the division has not received the report of appropriate district attorney general within the ninety-day settlement period, the division may, in its discretion, suspend action on the claim for an additional period not exceeding ninety (90) days. The division shall notify the claimant of any such suspension. Unless the claim is suspended under subsection (c), the division is authorized to transfer any claim filed under this chapter to the commission prior to the expiration of the ninety-day settlement period. The appropriate district attorney general shall be notified of the action of the division on each claim.

(e)

(1) Upon filing or transferring a claim for compensation to the commission, the claim shall be considered, determined and subject to appeal in the manner set forth in § 9-8-403. If a claimant consents to having the claimant's claim proceed upon affidavits filed with the commission without a hearing, the state shall be deemed to have waived a hearing on the claim unless the district attorney general requests a hearing within sixty (60) days after the claim is filed with, or transferred to, the claims commission. The district attorney general shall investigate the claim prior to the opening of formal commission proceedings and shall present any information such district attorney general may have in support of or in opposition to the claim. The report of the district attorney general and any police or offense reports attached thereto shall be sufficient compliance therewith; provided, such reports are accompanied by an affidavit of the district attorney general or law enforcement officer, where applicable, verifying the contents of the reports. Notwithstanding the Tennessee Rules of Civil Procedure or the Tennessee Rules of Evidence, the affidavit and report of the district attorney general and the affidavit and report of the law enforcement officer shall be made a part of the record before the commission to the same extent as though the district attorney general or the appropriate law enforcement officer had been present and testified to the matters stated therein. The matters stated in such reports shall be presumed true in the absence of a preponderance of the evidence to the contrary. The personal attendance of the district attorney general and the law enforcement officer may be commanded only if personal attendance is necessary to resolve a good faith dispute concerning the accuracy of information furnished by the district attorney general or law enforcement officer. Where personal attendance is required, the claimant shall serve the appropriate district attorney general and the appropriate law enforcement officer with a subpoena at least fourteen (14) days prior to the hearing which shall contain a clause which reads: “The procedure authorized pursuant to § 29-13-108(e) will not be deemed sufficient compliance with this subpoena.” Notwithstanding any other law to the contrary, if the district attorney general attends the proceeding, the district attorney general may present into evidence any police or offense reports and any other reports generated through the district attorney general's investigation of the claim.

(2) The claimant may present evidence and testimony on such claimant's own behalf, or the claimant may retain counsel. Any hearing held by the commission pursuant to this chapter which involves a claim based upon a sexually oriented offense shall, upon request of the claimant or counsel, be held in chambers unless good cause exists to the contrary. With the consent of the commission, the district attorney general may stipulate the circumstances of the claimant's victimization in lieu of direct testimony by the claimant.

(f) Upon filing or transferring a claim for compensation to the commission, the division shall attach to the claim all documentation presented by the claimant in support of the claim, evidence received or considered, proposed findings, staff recommendations, memoranda, investigative reports and data submitted to the division. The documents shall be accompanied by an affidavit of an employee of the division, stating in substance that the affiant is a duly authorized custodian of the documents and has authority to certify the documents, and that the documents are true copies of all documents described in this subsection (f). Notwithstanding the Tennessee Rules of Civil Procedure or the Tennessee Rules of Evidence, the affidavit and the documents submitted to the commission by the division shall constitute a part of the record of the commission and shall be considered in adjudicative proceedings under this part, including judicial review thereof.

(g) Notwithstanding any other law to the contrary, if the division denies a claim on the basis that the claimant does not meet the eligibility requirements for compensation under this part and the claimant appeals the denial to the commission, or if the division transfers the claim to the commission as a result of its inability to honor or deny the claim within the ninety-day settlement period, the commission shall consider the claim for the sole purpose of determining whether the claimant meets such eligibility requirements. Such eligibility requirements may include a determination as to whether the claimant has shown good cause for failing to file the claim within the one-year period as prescribed in subsection (a). Such eligibility requirements may include a determination as to whether the claimant has shown good cause for failing to file the claim. If the commission determines the claimant meets the eligibility requirements to receive compensation under this part, the commission shall enter an appropriate order reflecting such determination and remand the claim to the division of claims and risk management for the purpose of determining the amount of compensation to which the claimant is entitled and the manner in which such compensation shall be paid pursuant to § 29-13-111. Such order shall include the findings of fact enumerated in § 29-13-109(b)(2)(A)-(H) and in § 29-13-109(b)(2)(L)-(O).

(h) Notwithstanding § 9-8-406 or any provision of this part to the contrary, the department of treasury may, at its sole discretion, submit a report to the commission which explains the department's action on the claim. Any such report shall be filed within the time allowed for the filing of a responsive brief by a party. The department shall serve copies of the report upon the claimant and the district attorney general. Any such report shall be considered by the commission without oral argument by the department.

(i) The commission shall attach to its decision all documentation presented in support of a claim for which compensation is awarded, as well as an executed subrogation agreement. The administrative clerk of the commission shall, within five (5) days of receipt of the order, notify the claimant in writing of the decision and forward to the division a certified copy of the decision.

(j) The commission may, at any time, on its own motion or on the application of the claimant, vary any award for the payment of compensation made under this chapter in such manner as the commission deems appropriate, whether as to the terms of the order or by increasing the amount of the award, or otherwise.

29-13-109. Claims — Requirements — Judicial determination — Awards.

(a) No award may be made under this section unless the claimant shall have shown, supported by a preponderance of the evidence, that:

(1) Such an act did occur; and

(2) The injury or death proximately resulted from such act.

(b)

(1) All decisions granting an award under this chapter shall be in writing and shall set forth the findings of fact and the decision whether compensation is due under this chapter.

(2) Except as provided in § 29-13-108(g), the findings of fact shall include, but not be limited to, those enumerated in this subdivision (b)(2). The findings of fact shall include:

(A) The name and address of the victim;

(B) The name and address of the claimant, if different than the victim;

(C) Whether the claimant is eligible for compensation pursuant to § 29-13-105;

(D) The date, place and nature of the offense giving rise to the claim, including a finding that the offense is within the meaning of § 29-13-104;

(E) A statement of the injuries suffered by the victim;

(F) Whether the victim contributed to the crime in any respect;

(G) The name and address of the offender or, if not known, a statement to that effect;

(H) Whether the claimant has fully cooperated with the police and the district attorney general in the investigation and prosecution of the offender;

(I) Whether the claimant has received or is eligible to receive any benefits, payments or awards from any other source;

(J) Whether the award includes payment of expenses for mental health counseling;

(K) A statement of the losses or expenses incurred by the claimant that are eligible for reimbursement pursuant to §§ 29-13-106 and 29-13-107 which have been supported by evidence presented, with such documentation attached;

(L) Whether the claimant has executed a subrogation agreement;

(M) If compensation for pain and suffering is being made, a finding that the offense was sexually oriented and the victim did experience pain and suffering as a result of commission of the offense;

(N) If the offense giving rise to the claim involved use of a motor vehicle or watercraft, a finding that the operator of the motor vehicle or watercraft was acting with criminal intent to intentionally inflict injury or death, or was operating the motor vehicle or watercraft as is prohibited by § 55-10-401;

(O) If the claim is based upon the death of the victim and an award in excess of funeral and burial expenses is being sought, a finding that the claimant was a dependent of the decedent;

(P) Whether compensation is due to the claimant under this chapter, including the amount and manner of payment;

(Q) The name and address of each person to whom compensation is being paid, including the amount to be paid; and

(R) If the claimant is a minor or is incompetent, a plan for the disbursement of all funds for the benefit of the claimant pursuant to § 29-13-111.

(c) In determining whether to make an award under this section, or the amount of the award, any circumstances reasonably relevant to the criminal act may be considered, including the behavior of the victim which directly or indirectly contributed to the victim's injury or death, unless such injury or death resulted from the victim's attempt to prevent the commission of a crime or an attempted crime or to apprehend or attempt to apprehend an offender, as set forth in § 29-13-104(2) and (3).

(d) For the purposes of this chapter, a person is deemed to have intended an act, notwithstanding that by reason of age, insanity, drunkenness, or otherwise, such person was legally incapable of forming a criminal intent.

(e) No award of compensation shall be made until a subrogation agreement is executed by the claimant to the effect that the criminal injuries compensation fund will be reimbursed to the full amount expended by the fund less an award for attorney's fees should the claimant recover damages in a civil action for that injury or death. No part of the recovery due the criminal injuries compensation fund shall be diminished by any collection fees or for any other reason whatsoever.

(f) An award may be made under this section whether or not any person is prosecuted or convicted or acquitted, except as required by § 29-13-111, of any offense arising out of such act, or if such act is the subject of any other legal action. Furthermore, the apprehension of an offender is not a condition of award. However, no award shall be made unless the claimant fully cooperates

with the police and district attorney general in any prosecution of the offender, which prosecution occurs either before or after the payment of such compensation. Awards may be amended under § 29-13-108(j) in furtherance of this policy.

29-13-118. Forensic medical examinations in sexual assault cases.

(a) For purposes of this section, unless the context otherwise requires, "forensic medical examination" means an examination provided to a victim of a sexually-oriented crime by any health care provider who gathers evidence of a sexual assault in a manner suitable for use in a court of law.

(b)

(1) A victim of a sexually-oriented crime, defined as a violation of §§ 39-13-502 – 39-13-506, 39-13-522, 39-13-527, 39-13-531, and 39-13-532, shall be entitled to forensic medical examinations without charge to the victim. No bill for the examination shall be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. All claims for forensic medical examinations are eligible for payment from the criminal injuries compensation fund, created under § 40-24-107.

(2) Notwithstanding any provision of this part to the contrary, the victims shall not be required to report the incident to law enforcement officers or to cooperate in the prosecution of the crime in order to be eligible for payment of forensic medical examinations.

(c) A claim for compensation under this section shall be filed no later than one (1) year after the date of the examination by the health care provider that performed the examination, including a hospital, physician, SANE program, Child Advocacy Center, or other medical facility. The claim shall be filed with the division, in person or by mail. The division is authorized to prescribe and distribute forms for the filing of claims for compensation. The claim shall set forth the name and address of the victim, and any other information required by the division in order to satisfy federal regulations issued under the Victims of Crime Act of 1984, compiled generally in 42 U.S.C. § 10601 et seq. The claim shall be accompanied by an itemized copy of the bill from the health care provider that conducted the examination. The bill shall, at a minimum, set forth the name of the victim, the date the examination was performed, the amount of the bill, the amount of any payments made on the bill, and the name and address of the health care provider that performed the examination.

(d) The amount of compensation that may be awarded under this section shall not exceed one thousand dollars ($1,000), and shall constitute full compensation to the health care provider that provided the service. No provider receiving compensation pursuant to this section shall bill the victim for any additional cost related to the forensic medical examination. The compensation shall be made pursuant to this subsection (d) no later than ninety (90) days after receiving the documentation required under subsection (c).

(e) Payment to a health care provider under this section does not prohibit the victim from receiving other payments for which the victim may be eligible under this part or any other law.

29-13-302. Establishment of trust.

The commission or the division may, in such manner as it deems appropriate, turn over criminal injury compensation awards made to a minor to the juvenile court clerk to be placed in an interest-bearing account for the benefit of the minor. The award shall be accompanied with a petition and order directing the clerk to set up a fund for the minor.