

# SEXUAL ASSAULT JUDICIAL BENCHCARD

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## I. SEXUAL ASSAULT VICTIM DEFINITION

A sexual assault victim is a person who has been subjected to criminal sexual conduct, including the spouse of the defendant. (T.C.A. § 39-13-501(8))

## II. SEXUAL ASSAULT OFFENSES IN TENNESSEE

### A. Sexual Battery Classifications

- **Sexual Battery (T.C.A. § 39-13-505)**

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: force or coercion; 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; the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or the sexual contact is accomplished by fraud. (Class E felony)

- “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. (T.C.A. § 39-13-501(6))
- **Aggravated Sexual Battery (T.C.A. § 39-13-504)**  
Aggravated Sexual Battery is unlawful sexual contact with any of the following circumstances: 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; the defendant causes bodily injury to the victim; the defendant is aided or abetted by one or more other persons and force or coercion is used to accomplish the act or the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or the victim is less than 13 years of age. (Class B felony)
- **Sexual Battery by an Authority Figure (T.C.A. § 39-13-527)** 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: the victim was, at the time of the offense, at least 13 years of age but less than 18; or

the victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and, 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 power to accomplish the sexual act; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual act. (Class C felony)

- **Sexual Contact by an Authority Figure (T.C.A. §39-13-509)** It is an offense for a defendant to engage in unlawful sexual contact with a minor when the minor is less than 18 years of age, the defendant is at least 4 year older than the victim; and 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 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. 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. (Class A misdemeanor)

### B. Rape Classifications

- **Rape (T.C.A. § 39-13-503)** 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: force or coercion; without the consent of the victim and the defendant knows or should have known that the victim did not consent; the defendant knows that the victim is mentally defective, mentally incapacitated or physically helpless; or the sexual penetration is accomplished by fraud. (Class B felony)
  - “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. (T.C.A § 39-13-501 (7))
- **Aggravated Rape (T.C.A. § 39-13-502)** Aggravated Rape is rape 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 to reasonably believe it is a weapon; 2) the defendant causes bodily injury to the victim; 3) the defendant is aided and abetted by one or more other persons, and force or coercion is used to accomplish the act or the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless. (Class A felony)

### C. Child Rape Classifications

- **Rape of a Child (T.C.A. § 39-13-522)** 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 3 years of age but less than 13 years of age. (Class A felony with Range II or III sentencing).
- **Aggravated Rape of Child (T.C.A. § 39-13-531)** Aggravated Rape of a Child is when the victim is 3 years of age or less. 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. T.C.A. § 39-13-531(b). There is no release eligibility. T.C.A. § 40-25-501(h)(2)

### D. Statutory Rape Classifications (T.C.A. § 39-13-506)

Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim.

There are three classifications of the offense based on the age of the victim and the age of the defendant:

- **Mitigated Statutory Rape (T.C.A. § 39-13-506(a))** Victim is at least 15 but less than 18 years of age and the defendant is at least 4 but not more than 5 years older than the victim. (Class E felony)
- **Statutory Rape (T.C.A. § 39-13-506 (b)(1) and (2))** Victim is at least 13 but less than 15 years of age and the defendant is at least 4 years but less than 10 years older than the victim; or victim is at least 15 but less than 18 years of age and the defendant is more than 5 but less than 10 years older than the victim. (Class E felony)
- **Aggravated Statutory Rape (T.C.A. § 39-13-506(c))** Victim is at least 13 but less than 18 years of age and the defendant is at least 10 years older than the victim. (Class D felony)
- **Statutory Rape by Authority Figure (T.C.A. § 39-13-532)** 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 the victim is at least 13 but less than 18 years of age; the defendant is at least 4 years older than the victim; and the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over a 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 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 sexual penetration. No person who is found guilty of or pleads guilty to the offense shall be eligible for probation or judicial diversion. (Class B felony)

### E. Other Sexual Assault Offenses

- **Sexual Contact with Probationer or Parolee (T.C.A. § 39-16-409)** It is an offense for a probation and parole officer to engage in sexual contact or sexual penetration, whether consensual or non-consensual, with a probationer or parolee who is under the supervision of the department of correction; provided, that the probation or parole officer knows or reasonably should know the person is a probationer or parolee. (Class E felony)
- **Sexual Contact with Inmates (T.C.A. § 39-16-408)** It is an offense for a law enforcement officer, correctional employee, vendor or volunteer to engage in sexual contact or sexual penetration with a prisoner or inmate who is in custody at a penal institution either on or off the grounds. (Class E felony)
- **Tennessee Human Trafficking Act (T.C.A. § 39-13-309)** A person commits the offense of trafficking a person for a commercial sex act who knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person's provision of a commercial sex act; or who recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act. (Class A or B felony) (See full text for definitions of "recruits, entices, etc.")
  - A "Victims of Human Trafficking Fund, has been created (T.C.A. Title 9, Chapter 4, Part 2) pursuant to Public Chapter 356 effective July 1, 2019. The purpose is to fund specialized comprehensive treatment and support services to victims of human trafficking offenses as defined in T.C.A. § 39-13-314.

### III. HIV TESTING & SEXUAL OFFENSES (T.C.A. § 39-13-521)

When a person is arrested for aggravated rape; rape; aggravated child rape; rape of a child; aggravated rape of a child; statutory rape; mitigated statutory rape; aggravated statutory rape; and statutory rape by an authority figure, that person shall undergo HIV testing immediately or not later than forty eight hours after indictment or the presentment of the information, with or without request of the victim. The licensed medical lab shall report the results of the HIV test immediately to the victim.

- The following persons may have access to the test results: the victim, the parent or guardian of a minor or incapacitated victim, department of health, department of correction, the person tested, the district attorney general's office, and the attending physician of the person tested and of the victim.
- Actual transmission of HIV is not required in order for the court to consider it as a mandatory enhancement factor.
- Upon conviction for prostitution, patronizing prostitution, or promoting prostitution, the court shall order the convicted person to submit to an HIV test.

### IV. EVIDENCE & SEXUALLY ORIENTED CRIMES

#### A. Prohibition Against Requiring Polygraph Exams (T.C.A. § 38-3-123)

No law enforcement officer shall require any victim of a sexual offense, as defined in T.C.A. § 40-39-202, or violent sexual offense, as defined in T.C.A. § 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. Sexual Assault Victim's Prior Consensual Sexual Activity-Rape Shield Law (Rule 412 of the Tennessee Rules of Evidence)**

Rule 412 sets forth the admissibility of evidence of a victim's past sexual behavior. "Sexual behavior" means sexual activity of the alleged victim other than the sexual act at issue in the case. Reputation or opinion evidence of the sexual behavior of an alleged victim of such offense is inadmissible unless admitted in accordance with the procedures set out in Rule 412 and required by the Tennessee or United States Constitution.

Specific instances of the victim's sexual behavior are inadmissible unless:

- Required by the Tennessee or U.S. Constitution;
- The evidence is offered by the defendant on the issue of credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim's sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or
- If the sexual behavior was with the accused, on the issue of consent, or
- If the sexual behavior was with persons other than the accused, the evidence is offered: (1) to rebut or explain scientific or medical evidence, or to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or (2) to prove consent if the evidence is of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter with the victim that it tends to prove that the victim consented to the act charged or behaved in such a manner as to lead the defendant reasonably to believe that the victim consented.

The court shall use the following procedure to determine admissibility of Reputation or opinion or specific instances of conduct (sexual behavior)

- The person must file a written motion to offer such evidence.
- A hearing must be held in chambers or otherwise out of the hearing of the public and the jury to determine whether the proffered evidence is admissible. At the Rule 412 hearing the court must determine whether the standard required by this statute is met and whether the probative value of the evidence outweighs its unfair prejudice to the victim. The court will specify the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.
- The record of this hearing is sealed except for any testimony that may be used for impeachment, facilitating appellate review, or assisting the court or parties in their preparation of the case.

## **C. Admissibility of Video Recordings of Child Testimony (T.C.A. § 24-7-123)**

Authorizes the admission into evidence of a video recording of an interview of a child under the age of 13 by a forensic

interviewer containing a statement made by the child describing any act of sexual contact with or on the child by another if:

- 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;
- The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pretrial, to possess particularized guarantees of trustworthiness. Trustworthiness shall be determined by considering a number of factors; (See the full text of the statute for the factors evidencing trustworthiness.)
- The interview was conducted by a qualified forensic interviewer; (See the full statute for the qualifications of a forensic interviewer.)
- The recording is both visual and oral;
- The interview was recorded on one recording and is unaltered and accurately reflects the interview of the child;
- Every voice heard on the video is properly identified by the court.

### **Other Considerations:**

- The video recording admitted pursuant to this section shall be discoverable under the TN Rules of Criminal Procedure.
- The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.
- The court shall enter a protective order to restrict the video recording from further disclosure or dissemination.
- The recording may 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.

## **IV. ORDERS OF PROTECTION (T.C.A. §36-3-602) & THE SEXUAL ASSAULT VICTIM T.C.A. § 36-3-601 (10)**

- Any domestic abuse, stalking 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 by filing a sworn petition.
  - No conviction required.
  - No relationship requirement for sexual assault or stalking victim.

**Note:** When adjudicating a sexual assault crime, ask whether there is an order of protection in place for the victim.

## **V. SPECIAL CONSIDERATIONS FOR VICTIMS OF SEXUAL ASSAULT**

- **Statute of Limitations (T.C.A. §40-2-101):** Prosecution for a felony offense shall begin within:
  - 15 years for a Class A felony;
  - 8 years for a Class B felony;
  - 4 years for a Class C or D felony;
  - 2 years for a Class E felony.

- For exceptions for Prosecutions for offenses committed against a child, see T.C.A. §40-2-101(e)-(n).
- **Sex Offender Registry (T.C.A. §40-39-201 et seq.)**
  - In general, Sex offenders and violent sexual offenders are required to report in person within 48 hours of establishing or changing their address, employment status or school information.
  - 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 registry information to the TBI for inclusion on the Sexual Offender Registry within 48 hours of the offender's adjudication for qualifying offenses set out in T.C.A. §40-39-202(29).
- **Victim's Compensation:** The Criminal Injuries Compensation Program provides financial compensation to victims of crime who sustain bodily injury or death, for losses or expenses, who report timely to the authorities and cooperate with the police.
  - Sexual assault victims may receive benefits for pain and suffering. (T.C.A. § 29-13-106) There is a one-year filing deadline (from occurrence of crime, death of victim or diagnosis of injury against minor), which may be extended in the case of minors or for good cause. (T.C.A. § 29-13-108)
- **Forensic Medical Examinations:** A victim of a sexually oriented crime shall be entitled to a forensic medical examination without charge to the victim. All claims for forensic medical exams are eligible for payment from the Tennessee Criminal Injuries Compensation Fund. The victim shall not be required to report the incident to law enforcement or to cooperate with the prosecution of the case to be eligible for payment of the forensic medical examination. (T.C.A. § 29-13-118)
- **Reporting Requirements:** There is a reporting requirement for known or suspected child sexual abuse. (T.C.A. §37-1-605) Reports should be made to:
  - Local Department of Children's Services;
  - Juvenile Judge;
  - Office of the Sheriff or Chief Law Enforcement Officer where the child resides.
- There is a reporting requirement for suspected or known abuse, neglect or exploitation of mentally or physically deficient advanced age adults who are not able to protect themselves. (T.C.A. § 71-6-103)
- Healthcare providers are not required to report injuries of an adult victim of a sexual assault offense

or domestic abuse if the victim objects to the release of any identifying information to law enforcement. (T.C.A. § 38-1-101) Note: This exception shall not apply if the injuries are considered by the treating healthcare professional to be life threatening or if the victim is being treated for injuries inflicted by strangulation, knife, pistol, gun or other deadly weapon.

- **Statute of Limitations (Civil) for Sexual Offenses Against Minors (T.C.A. §28-3-116)**
  - Extends civil SOL for child sexual abuse to 15 years from date person becomes 18; or if injury not discovered at time of abuse, within 3 years of discovery.
- **Statute of Limitations (Criminal) for Sexual Offenses Against Minors (T.C.A. §40-2-101 (o)(1))**
  - Authorizes prosecution of listed criminal offenses, when committed against a minor under 18 years of age, to commence as provided in subsection (o) (2).
  - **T.C.A. §40-2-101(o)(2)** provides that a person may be prosecuted, tried and punished for one of the listed offenses at any time if: (A) victim was under 13; or (B) victim was 13-17 at time of offense and reported the offense to another person prior to the victim turning 23 years of age.
  - **T.C.A. §40-2-101(o)(3)(A)** provides that except per subdivision (o)(3)(B), a person may be prosecuted, tried and punished for an offense listed in (o)(1) at any time after the commission of an offense if: (i) the victim was at least 13 but no more than 17 at the time of the offense; and (ii) the victim did not meet the reporting requirements of subdivision (o) (3)(B)(ii)
  - **T.C.A. §40-2-101(o)(3)(B)** provides that if the victim did not meet the reporting requirements, at a date more than 25 years from date victim becomes 18, prosecution must offer admissible and credible evidence corroborating the allegations or similar acts by the defendant.

**\* PLEASE REFER TO THE T.C.A. FOR THE FULL TEXT OF EACH STATUTE.\***