

# SEXUAL ASSAULT JUDICIAL BENCHCARD

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## I. SEXUAL ASSAULT VICTIM DEFINITION

A sexual assault victim is the person alleged to have 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.

The victim is incapable of consent if:

- (1) The sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services; and
- (2) The defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. (Class E felony)
  - “Coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.
  - “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. Aggravated Sexual Battery is a 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 trust or power to accomplish the sexual contact; 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. Sexual battery by an authority figure is a Class C felony.

### Sexual Contact with a minor – 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. Sexual contact by an authority figure is a Class A misdemeanor with a mandatory minimum fine of \$1,000. Each instance of unlawful sexual contact shall be considered a separate offense.

### 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 has reason to know 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 8 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 eight (8) years of age or less. (Class A felony) 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 if the defendant was an adult at the time of the commission of the offense. T.C.A. § 39-13-531(b)(2)(B). There is no release eligibility. T.C.A. § 40-35-501(h)(3). The judge shall sentence the defendant within Range III of title 40 chapter 35 if the defendant was a juvenile at the time of the commission of the offense. T.C.A. § 39-13-531(b)(1).

### D. Sentencing restrictions

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. T. C. A. § 39-13-523.

The judgment of conviction for all persons convicted of aggravated rape, rape, aggravated sexual battery, rape of a child, aggravated rape of a child, facilitation of rape of a child and, facilitation of aggravated rape of a shall include that the person is sentenced to community supervision for life to begin 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. T.C.A. § 39-13-524

### E. 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.

Since the offense of statutory rape includes an age element whereas the offense of rape does not, and the offense of rape includes the element of force whereas the offense of statutory rape does not, statutory rape was not a lesser included offense in a prosecution for rape by force or coercion. State v. Woodcock, 922 S.W.2d 904, 1995 Tenn. Crim. App. LEXIS 982 (Tenn. Crim. App. 1995).

In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2. (excerpt from T.C.A. § 39-13-506(d)(2)(B))

#### Statutory Rape Offenses:

**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 pursuant to TCA § 40-35-313.** (Class B felony)

### E. Other Sexual Assault Offenses

#### Penalties for Continuous Sexual Abuse of a Child (T.C.A. § 39-13-518)

Penalties for multiple acts of sexual abuse during certain time frames and the ages of children are specified in this section. These penalties range from Class A felony to Class C Felony. Please see T.C.A. 39-13-518 for the specific number of crimes and requirements of notice to defendant.

If defendant is convicted of continuous sex abuse of a child, the judge shall revoke bail immediately, notwithstanding sentencing hearings, motions for a new trial, or related post-guilt determination hearings. T.C.A. 40-11-113.

#### 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)

### 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 and report the results of the HIV test immediately to the victim.

### 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)**

#### **Forensic interview admissibility**

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 certain factors in T.C.A. §24-7-123 are met.

### **D. Audio Visually Recorded Testimony in Child Sexual Abuse Proceedings. (T.C.A. § 24-7-117)**

In criminal and civil proceedings pertaining to offenses defined in § 37-1-602 as "child sexual abuse" in regards to the statements of a child or children under the age of thirteen (13) years of age who are victims of such abuse, the court may, on the motion of any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. Only the court, the attorneys for the parties, the defendant, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony. (Other relevant factors can be found in T.C.A. § 24-7-117.)

If the court orders the testimony of a child to be taken outside the courtroom, the child shall not be required to testify in court at the proceeding for which the testimony was taken, unless so ordered pursuant to section c of this code. T.C.A. § 24-7-117

## **V. 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 is required. There is no relationship requirement for sexual assault victim.

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

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

**Petition for protective order prohibiting the defendant and defendant's counsel from publishing victim, informant, or witness's name, contact information, or statements at any time prior to or during trial. (T.C.A. §40-17-104)**

If the district attorney general is required to disclose to the defendant information including the name, contact information, or statements of a victim of a sexual offense under title 39, chapter 13, part 5...then the district attorney general may petition the court for a protective order prohibiting the defendant and defendant's counsel from publishing victim, informant, or witness's name, contact information, or statements at any time prior to or during the trial. If the court finds there is good cause for prohibiting the publishing of the information, the court shall issue the protective order.

**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).

**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 (q)(1))**

Authorizes prosecution of listed criminal offenses, when committed against a minor under 18 years of age, to commence as provided in subsection (q)(2).

**T.C.A. §40-2-101(q)(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(q)(3)(A)** provides that except per subdivision (q)(3)(B), a person may be prosecuted, tried and punished for an offense listed in (q)(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 (q)(3)(B)(ii)

**T.C.A. §40-2-101(q)(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.

### **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. T.C.A. §40-39-203

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:** Sexual assault victims may receive benefits for pain and suffering from the Criminal Injuries Compensation Program (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:** Any person who knows or has reasonable cause to suspect a child has been sexually abused shall report such knowledge to the local office of the Department of Children's Services, or the juvenile judge having jurisdiction where the judge resides, or the 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.

## **VII. TRAFFICKING OFFENSES**

### **T.C.A. §39-13-307 Involuntary labor servitude – Restitution**

A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by: Causing or threatening to cause serious bodily harm to the person; Physically restraining or threatening to physically restrain the person; Abusing or threatening to abuse the law or legal process; etc.

**Punishments:** Restitution for value of labor, criminal prosecution for theft and other appropriate criminal statutes, Class C felony for involuntary servitude, Class B felony for involuntary servitude if the violation resulted in serious bodily injury or death of a victim or the victim was held in servitude exceeded one (1) year or the defendant held ten(10) or more victims in servitude at any time during the defendant's criminal episode, Class A felony for involuntary servitude if the victim was more than twelve (12) years of age but less than eighteen (18) years of age.

### **T.C.A. §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: 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 Benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act described in § 39-13-307.

### **Trafficking for Commercial Sex 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; recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act; or commits the acts in this subsection when the intended victim of the offense is a law enforcement officer or a law enforcement officer 18 years of age or older posing as a minor. (Class A or B felony) (See full text for definitions of "recruits, entices, etc

### **Aggravated Human Trafficking (T.C.A. 39-13-316)**

- (a) Aggravated human trafficking is the commission of an act that constitutes any of the following criminal offenses, if the victim of the criminal offense is under thirteen (13) years of age:
- (1) Involuntary labor servitude, under §39-13-307;
  - (2) Trafficking persons for forced labor or services, under §39-13-308;
  - (3) Trafficking for commercial sex act, under §39-13-309
  - (4) Patronizing prostitution, under §39-13-514; or
  - (5) Promoting prostitution, under §39-13-515
- (b)(1) Aggravated human trafficking is a Class A felony.