

Selected Domestic Violence, Sexual Assault, and Stalking Laws Legislative Update 2006

PC 627-County Services to Victims of Crime—New Section 40-24-109

The legislative body of any county may choose to create a program to assist crime victims, their families and survivors or to fund an existing victims' assistance program. The legislative body may also choose to provide funding for the program. If a program already exists, then additional funding may be provided. The type of programs included may be rape crisis centers, domestic violence shelters, victim of crime hotlines and information programs, individual, group and family counseling services, crisis intervention programs, support groups or any other similar program. To fund such a program, the clerks of the local courts shall collect a \$45.00 "victims assistance assessment (fee)" from any person who enters a plea of guilty, is found guilty by a judge or jury, enters a no contest plea, or enters a plea to any criminal offense that is considered a crime by the state. However, for any crime in which the maximum punishment is a fine of less than \$500.00 with no imprisonment, no fee shall be collected. Violations of the motor vehicle laws, except for DUI violations and reckless driving caused by use of an intoxicant, shall not be assessed a fee.

PC 638- Prohibiting Use of Polygraph—New Section 38-3-123

No law enforcement officer can require a victim of a sexual offense to take a polygraph test or any other instrumental or mechanical truth assessment or lie detector test as a condition of the officer proceeding with the investigation. If any officer violates this provision the officer is subject to disciplinary action.

PC 652-Presumption of Custody Against a Parent Convicted of a Sex Crime

There is a presumption that custody shall not be awarded to a parent who has been convicted of a sex crime against a child under the age of 18. This can be overcome only by a showing of clear and convincing evidence to the contrary. This applies only to people convicted on or after July 1, 2006. This does not prevent a parent from having visitation with the child as long as the visitation is supervised.

PC 676-Extension of an Order of Protection Based on a Violation

This statute permits a petitioner to file a petition to modify an Order of Protection upon violation of the order, and the judge can extend the order for up to five years on an initial violation and up to ten years upon a second or subsequent violation.

PC 804-Posting of DV National Hotline Number-New Section 71-6121(e)

All doctors' offices, health care facilities, community centers, and pharmacies must post a notice stating that any person, regardless of age, who may be a victim of domestic violence, may call the nationwide domestic violence hotline. The number of the domestic violence hotline must be printed in boldface type. The notice must be near the main entrance and be on a sign 8.5 X 11 inches or larger.

PC 824-Sexual Violence Awareness and Prevention Curriculum

The Department of Education is urged to develop a sexual violence awareness curriculum. The curriculum should be presented at least once to grades seven through eight and preferably twice to grades nine through twelve. The curriculum should include information on teen dating violence (date rape, statutory rape, and stranger rape), the use of alcohol and drugs in sex crimes, prevention, the need for prompt medical attention, and sexually transmitted diseases (AIDS/HIV), legal penalties for sex crimes, and resources available on sexual assault.

PC 833-Automated Victim Notification-New Section 40-38-118

This act requires the district attorneys conference to establish an automated victim notification system. Once registered, a victim will be automatically notified when the offender is transferred or assigned to another facility, is given a different security classification, is released on temporary leave or otherwise, or is discharged or has escaped. If for any reason the automated system fails to notify the victim, the victim does not have a cause of action against the state or the conference. Funds to establish this system should be sought from the United States Department of Justice.

PC 843-Reporting Allegations of Sex Abuse of a Pregnant Minor

When a doctor or other medical personnel makes an initial diagnosis of pregnancy of an unemancipated minor, this individual must provide to the parent, if the parent is present, and with consent of the minor available information on how to report to the Department of Children's Services any occurrence of sex abuse which may have resulted in the pregnancy of the minor unless such a disclosure would violate the federal Health Insurance Portability and Accountability Act of 1996. Failure to provide the information will not subject to a Class A misdemeanor as outlined in T.C.A. § 37-1-412.

PC 845-Child Rape Protection Act of 2006

If a doctor has reasonable belief that a minor has been sexually abused because the doctor has been requested to perform an abortion on a minor who is under the age of 13, the doctor shall report the date and time of the abortion and provide a sample of the embryonic or fetal tissue extracted during the abortion to the appropriate law enforcement officer conducting the rape investigation. The first violation of this act is a civil penalty,

carrying a fine of \$500.00. A second violation is a civil penalty with a fine of not less than \$1000.00. A third or subsequent violation is a Class A misdemeanor. If the person performing the abortion is a licensed doctor, a violation will be considered unprofessional conduct, which will also subject the doctor to disciplinary action.

PC 871-Petitions for Minors Seeking Orders of Protection

This act permits caseworkers (advocates), working at a not-for-profit organization which receives funds for family violence and child abuse prevention and shelter pursuant to Title 71, Chapter 6, Part 2, to file a petition for an order of protection on behalf of unemancipated person under eighteen years of age. The caseworker may sign as long as the petition is not against the unemancipated minor's parent or legal guardian. If the petition is against the unemancipated minor's parent or guardian, unless the court finds that doing so would cause 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. If the parents are not living together or jointly caring for the minor, then the information shall be served on the primary residential parent.

PC 890-Child Protection Act of 2006

Section 2

This act amends T.C.A. § 36-1-113, mandating that all petitions filed in dependent and neglect cases be adjudicated in six months unless an extension is in the best interests of the child, and the judge must file a final order with findings and conclusions of law within (30) days of the hearing.

Section 3

This act amends T.C.A. § 36-1-119, and allows judges to enter a final order in an adoption proceeding if no appeal is taken within one year rather than two years, and a final order from an appeal must be entered in nine months as opposed to one year.

Section 4

The act creates a new statute T.C.A. § 37-5-105, requiring the Commissioner of the Department of Children's Services to develop a plan and recommendations regarding all reports of child maltreatment in consultation with the child sexual abuse task force, the Child Advocacy Centers, the Tennessee Council of Juvenile and Family Court Judges, the Tennessee Commission on Children and Youth, the Tennessee Supreme Court Administrative Office of the Court, the District Attorneys General Conference and the juvenile and criminal court clerks in developing the plan. The plan is to be submitted to the Judiciary Committees of the Senate and House of Representatives, the House of Representatives Children and Family Affairs Committee and the Select Committee on Children and Youth.

Section 5

The act rewrites the statutory rape law, T.C.A. § 39-13-506, creating different classes of statutory rape:

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 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.

Mitigated statutory rape is a Class E felony.

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 13 but less than 15 years of age and the defendant is at least 4 years older than the victim or the victim is at least 15 but less than 18 years of age and the defendant is more than 5 years older than the victim.

Statutory rape is a Class E felony.

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 13 but less than 18 years of age and the defendant is at least 10 years older than the victim. Aggravated statutory rape is a Class D felony.

Section 6

The act changes the definition of parent found in T.C.A. § 40-39-202 and adds that a step-parent shall not be considered a parent if the victim is a minor less than 13 years of age.

Section 7

The act changes the definition of sex offenses for the purpose of the sexual offender registry, requiring that a statutory rape defendant must register if the defendant is an authority figure or the defendant has at least one prior conviction of mitigated statutory rape, statutory rape, or aggravated statutory rape.

Sections 8 and 9

The act also requires those committing spousal sexual battery under the old spousal rape statute prior to June 18, 2005 to register with the sex offender registry. Furthermore, it requires a defendant convicted of aggravated statutory rape or exploitation of a minor by electronic means (if the victim was less than 13 years of age) to register as a sex offender.

Sections 10 through 21

These sections of the act clarify certain sections of the sex offender registry act regarding registration requirements. Section 18 allows sex offenders who were convicted of statutory rape prior to July 1, 2006 to file a request for termination of registration if such an offender would not be required to register if such offense was committed on or after July 1, 2006.

Sections 22 through 24

The act also redefines rape of a child as “the unlawful sexual penetration of a victim by the defendant or the defendant by the victim, if such victim is older than 3 but younger than 13.” Additionally, it creates a new statute, Aggravated Rape of a Child, which is the unlawful sexual penetration of a victim by the defendant or the defendant by the victim, if the victim is 3 or younger. Aggravated rape of a child is a Class A felony, and there is no early release eligibility.

PC 897-Sexual Battery by an Authority Figure

This act deletes the old definition of sexual battery of an authority figure found in T.C.A. § 39-13-527. The new T.C.A. § 39-13-527 defines sexual battery as the “unlawful sexual contact with a victim by the defendant or the defendant by a victim,” accompanied by either of the following elements: (1) The victim must be between the ages of 13 and 17; or (2) the victim must be mentally challenged, mentally incapacitated or physically helpless regardless of age. Additionally, the defendant must have been in a position of trust, or the defendant must have been in a position to supervise or discipline the victim because of the defendant’s legal, professional or occupational status, or the defendant must have held parental or custodial authority over the victim. The defendant must have used this trust, position or authority over the victim to accomplish the sexual contact. Sexual battery by an authority figure is a Class C felony.

PC 920-Violations of Order of Protection Act

This act moves the Violation of the Protective Order from the civil section of the code to the criminal and clarifies that it applies to victims of domestic abuse, sexual assault, and stalking; replaces an original section of the code that was deleted last year relative to jurisdiction for contempt actions; clarifies the notice requirement to victims; makes a violation of a protective order a misdemeanor crime of domestic violence, and clarifies the relationship between a violation of the protective order and conditions of release.

PC 927-Statute of Limitations on Sex Cases Against Children

This act expands the statute of limitations of sex crimes. It allows a child victim to prosecute such a criminal offense no later than twenty-five years from the date the child turns eighteen years of age.

PC 932-Class A Misdemeanor of Impersonating a Minor's Parent

Anyone who impersonates the parent or legal guardian of an unemancipated minor in order for the minor to obtain an abortion commits a Class A misdemeanor. The person performing the abortion must obtain written documentation, other than the consent itself, which establishes the relationship of the parent or guardian to the minor. This documentation and the signed consent shall be kept for one year. If the person performing the abortion does not keep this information, it is a Class B misdemeanor, punishable by a fine. But if the person failed to obtain the required information due to the fact that there was an medical emergency and the abortion had to be performed, there is no violation.

PC 939-Criminal Violation of Abuse and Neglect

Anyone who intentionally abuses or neglects a child under the age of eighteen and negatively affects the child's welfare and health commits a Class A misdemeanor. If the child is under the age of six, the penalty is a Class E felony.

PC 967-Domestic Abuse Resulting in Death (Second Degree Murder)

This act expands the definition of second degree murder, stating that if someone intentionally engages in multiple incidents of domestic abuse, assault, or infliction of bodily injury against a single victim, the judge or jury may conclude that the defendant knew that the multiple incidents were reasonably certain to cause death, regardless of whether a single incident would have caused death.

PC 973-Statutory Rape by an Authority Figure

Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim if the victim is at least 13 but less than 18 and the defendant is at least 4 years older than the victim. The defendant must have been in a position of trust, or must have had supervisory or disciplinary power over the victim. This could have come from the defendant's legal, professional, or occupational status. The defendant must have used this position of trust or power to accomplish the sexual penetration. It is also considered statutory rape by an authority figure if the defendant had parental or custodial authority over the victim and used it to accomplish the sexual penetration. This offense is a Class C felony. Any person who is found guilty or pleads guilty to such offense cannot obtain probation or judicial diversion.

PC 979-Abandonment and Child Custody

If a court determines that a parent willfully abandoned a child for a period of eighteen months, then the parent's residential time as provided in the parenting plan or court order shall be limited. This can be avoided if the court finds clear and convincing evidence to the contrary. This does not prevent the parent from being granted limited visitation with the child. This section does not apply to children in the legal custody of the Department of Children's Services.

PC 1005-Sexual Contact with Prisoners or Inmates

It is a crime for a law enforcement officer, correctional employee, vendor or volunteer to have sexual contact with a prisoner or inmate who is in custody at a penal institution. This is true whether or not the sexual contact occurs at the penal institution or elsewhere. A volunteer is anyone who is assigned to a volunteer job and provides services without pay from the correctional agency. Private contractors and their employees are considered correctional employees. A violation of this offense is a class E felony.