





From \_\_\_\_\_ to \_\_\_\_\_  
*Day and Time Day and Time*

every week  every other week  other: \_\_\_\_\_.

This parenting schedule begins  \_\_\_\_\_ or  date of the Court's Order.  
*Day and Time*

**C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS**

*Indicate if child or children will be with parent in ODD or EVEN numbered years or EVERY year:*

	MOTHER	FATHER
New Year's Day	_____	_____
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Easter Day (unless otherwise coinciding with Spring Vacation)	_____	_____
Passover Day (unless otherwise coinciding with Spring Vacation)	_____	_____
Mother's Day	_____	_____
Memorial Day (if no school)	_____	_____
Father's Day	_____	_____
July 4 <sup>th</sup>	_____	_____
Labor Day	_____	_____
Halloween	_____	_____
Thanksgiving Day & Friday	_____	_____
Children's Birthdays	_____	_____
Other School-Free Days	_____	_____
Mother's Birthday	_____	_____
Father's Birthday	_____	_____

Other: \_\_\_\_\_

A holiday shall begin at 6:00 p.m. on the night preceding the holiday and end at 6:00 p.m. the night of the holiday, unless otherwise noted here \_\_\_\_\_.

This holiday schedule and other school free days shall supersede the Day-To-Day Schedule.

**D. FALL VACATION** *(If applicable)*

The day to day schedule shall apply except as follows: \_\_\_\_\_ beginning \_\_\_\_\_.

**E. WINTER (CHRISTMAS) VACATION**

The  mother  father shall have the child or children for the first period from the day and time school is dismissed until December \_\_\_\_ at \_\_\_\_ a.m./p.m.  in odd-numbered years  in even-numbered years  every year. The other parent will have the child or children for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. The parties shall alternate the first and second periods each year.

Other agreement of the parents: \_\_\_\_\_

**F. SPRING VACATION** *(If applicable)*

The day-to-day schedule shall apply except as follows: \_\_\_\_\_ beginning \_\_\_\_\_.

**G. SUMMER VACATION**

The day-to-day schedule shall apply except as follows:

\_\_\_\_\_ beginning  
\_\_\_\_\_.

Is written notice required?  Yes  No. If so, \_\_\_\_\_ number of days.

**H. TRANSPORTATION ARRANGEMENTS**

The place of meeting for the exchange of the child or children shall be:

\_\_\_\_\_.

Payment of long distance transportation costs (*if applicable*):  mother  father  both equally.

Other arrangements: \_\_\_\_\_.

If a parent does not possess a valid driver's license, he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

**I. SUPERVISION OF PARENTING TIME (*if applicable*)**

Check if applicable

Supervised parenting time shall apply during the day-to-day schedule as follows:

\_\_\_\_\_ Place:

\_\_\_\_\_ Person or organization supervising:

Responsibility for cost, if any:  mother  father  both equally.

**J. OTHER**

The following special provisions apply:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. DECISION-MAKING**

**A. DAY-TO-DAY DECISIONS**

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

**B. MAJOR DECISIONS**

Major decisions regarding each child shall be made as follows:

- |                            |                          |        |                          |        |                          |       |
|----------------------------|--------------------------|--------|--------------------------|--------|--------------------------|-------|
| Educational decisions      | <input type="checkbox"/> | mother | <input type="checkbox"/> | father | <input type="checkbox"/> | joint |
| Non-emergency health care  | <input type="checkbox"/> | mother | <input type="checkbox"/> | father | <input type="checkbox"/> | joint |
| Religious upbringing       | <input type="checkbox"/> | mother | <input type="checkbox"/> | father | <input type="checkbox"/> | joint |
| Extracurricular activities | <input type="checkbox"/> | mother | <input type="checkbox"/> | father | <input type="checkbox"/> | joint |
| _____                      | <input type="checkbox"/> | mother | <input type="checkbox"/> | father | <input type="checkbox"/> | joint |

**III. FINANCIAL SUPPORT**

**A. CHILD SUPPORT**

Father's gross monthly income is \$ \_\_\_\_\_  
Mother's gross monthly income is \$ \_\_\_\_\_

1. The final child support order is as follows:
  - a. The  mother  father shall pay to the other parent as regular child support the sum of \$ \_\_\_\_\_  weekly  monthly  twice per month  every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.\***

If this is a deviation from the Child Support Guidelines, explain all of the following:

The \_\_\_\_\_ reason \_\_\_\_\_ for \_\_\_\_\_ the \_\_\_\_\_ deviation:

\_\_\_\_\_

The presumptive amount of the child support (without the deviation): \_\_\_\_\_

How is the application of the Guidelines unjust or inappropriate?

\_\_\_\_\_

How is the best interest of the child served?

\_\_\_\_\_

Does the child support obligation after the deviation provide for all of the child(ren)'s needs, taking into consideration both parents' income?  
\_\_\_\_\_

2. Retroactive Support: A judgment is hereby awarded in the amount of \$ \_\_\_\_\_ to  mother  father against the child support payor representing retroactive support required under Section 1240-2-4.06 of the D.H.S. Income Shares Child Support Guidelines dating from \_\_\_\_\_ which shall be paid (including pre/post judgment interest) at the rate of \$ \_\_\_\_\_ per  week  month  twice per month  every two weeks until the judgment is paid in full.

3. Payments shall begin on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

This support shall be paid:

- directly to the other parent.
- to the Central Child Support Receipting Unit, P. O. Box 305200, Nashville, Tennessee 37229, and sent from there to the other parent at:  
\_\_\_\_\_.
- A Wage Assignment Order is attached to this Parenting Plan.
- by direct deposit to the other parent at \_\_\_\_\_ Bank for deposit in account no. \_\_\_\_\_.
- income \_\_\_\_\_ assignment \_\_\_\_\_ not \_\_\_\_\_ required;  
Explanation: \_\_\_\_\_.
- other: \_\_\_\_\_.

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

\*Child Support Worksheet can be found on DHS website at <http://www.state.tn.us/humanserv/is/isdocuments.html> or at your local child support offices.

## B. FEDERAL INCOME TAX EXEMPTION<sup>1</sup>

The  mother  father is the parent receiving child support.

The Mother shall claim the following children: \_\_\_\_\_

The Father shall claim the following children: \_\_\_\_\_

<sup>1</sup> NOTE: The child support schedule assumptions in the guidelines (1240-2-4-.03 (6)(b) ) assume that the parent receiving the child support will get the tax exemptions for the child.

The  mother  father may claim the exemptions for the child or children so long as child support payments are current by the claiming parent on January 15 of the year when the return is due. The exemptions may be claimed in:  alternate years starting \_\_\_\_\_

each year  other: \_\_\_\_\_.

The  mother  father will furnish IRS Form 8332 to the parent entitled to the exemption by February 15 of the year the tax return is due.

### **C. PROOF OF INCOME AND WORK-RELATED CHILD CARE EXPENSES**

Each parent shall send proof of income to the other parent for the prior calendar year as follows:

- IRS Forms W-2 and 1099 shall be sent to the other parent on or before February 15.
- A copy of his or her federal income tax return shall be sent to the other parent on or before April 15 or any later date when it is due because of an extension of time for filing.
- The completed form required by the Department of Human Services shall be sent to the Department on or before the date the federal income tax return is due by the parent paying child support. *This requirement applies only if a parent is receiving benefits from the Department for a child.*

The parent paying work-related child care expenses shall send proof of expenses to the other parent for the prior calendar year and an estimate for the next calendar year, on or before February 15.

### **D. HEALTH AND DENTAL INSURANCE**

Reasonable health insurance on the child or children will be:

- maintained by the mother
- maintained by the father
- maintained by both



Proof of continuing coverage shall be furnished to the other parent annually or as coverage changes. The parent maintaining coverage shall authorize the other parent to consult with the insurance carrier regarding the coverage in effect.

Uncovered reasonable and necessary medical expenses, which may include but is not limited to, deductibles or co-payments, eyeglasses, contact lens, routine annual physicals, and counseling will be paid by  mother  father  pro rata in accordance with their incomes. After insurance has paid its portion, the parent receiving the bill will send it to the other parent within ten days. The other parent will pay his or her share within 30 days of receipt of the bill.

If available through work, the  mother  father shall maintain dental, orthodontic, and optical insurance on the minor child or children.

#### **E. LIFE INSURANCE**

If agreed upon by the parties, the  mother  father  both shall insure his/her own life in the minimum amount of \$ \_\_\_\_\_ by whole life or term insurance. Until the child support obligation has been completed, each policy shall name the child/children as sole irrevocable primary beneficiary, with the  other parent  other \_\_\_\_\_, as trustee for the benefit of the child(ren), to serve without bond or accounting.

#### **IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES**

The child or children are scheduled to reside the majority of the time as designated in Section I.A. This parent is designated as the primary residential parent also known as the custodian, **SOLELY** for purposes of any other applicable state and federal laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians. **THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.**

#### **V. DISAGREEMENTS OR MODIFICATION OF PLAN**

Should the parents disagree about this Parenting Plan or wish to modify it, they must make a good faith effort to resolve the issue by the process selected below before returning to Court. *Except for financial support issues including child support, health and dental insurance, uncovered medical and dental expenses, and life insurance, disputes must be submitted to:*

- Mediation by a neutral party chosen by the parents or the Court.
- Arbitration by a neutral party selected by parents or the Court.

The Court DUE TO ORDER OF PROTECTION OR RESTRICTIONS.

The costs of this process may be determined by the alternative dispute process or may be assessed by the Court based upon the incomes of the parents. It must be commenced by notifying the other parent and the Court by  written request  certified mail

other: \_\_\_\_\_.

In the dispute resolution process:

- A. Preference shall be given to carrying out this Parenting Plan.
- B. The parents shall use the process to resolve disputes relating to implementation of the Plan.
- C. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.
- D. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may award attorney fees and financial sanctions to the prevailing parent.

## **VI. RIGHTS OF PARENTS**

Under T.C.A. § 36-6-101 of Tennessee law, both parents are entitled to the following rights:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one 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;

- (5) 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 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;
- (6) 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;
- (7) 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;
- (8) 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
- (9) The right to access and participation in the child's education on the same bases 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.

## VII. NOTICE REGARDING PARENTAL RELOCATION

The Tennessee statute (T.C.A. § 36-6-108) which governs the notice to be given in connection with the relocation of a parent reads in pertinent part as follows:

- (a) After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:
  - (1) Statement of intent to move;
  - (2) Location of proposed new residence;
  - (3) Reasons for proposed relocation; and
  - (4) Statement that absent agreement between the parents or an objection by the non-relocating parent within thirty (30) days of the date notice is sent by registered or certified mail in accordance with subsection (a), the relocating parent will be permitted to do so by law.
- (b) Absent agreement by the parents on a new visitation schedule within thirty (30) days of the notice or upon a timely objection in response to the notice, the relocating parent shall file a petition seeking approval of the relocation. The non-relocating parent has thirty (30) days to file a response in opposition to the petition. In the event no response in opposition is filed within thirty (30) days, the parent proposing to relocate with the child shall be permitted to do so.
- (c) (1) If a petition in opposition to relocation is filed, the court shall determine whether relocation is in the best interest of the minor child.

## VIII. PARENT EDUCATION CLASS

This requirement has been fulfilled by  both parents  mother  father  neither.  
Failure to attend the parent education class within 60 days of this order is punishable by contempt.

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**Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct. (A notary public is required if this is a proposed plan by one parent. A notary public is required if this is an agreed plan by both parents.)**

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Mother

Date and Place Signed

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

Father

Date and Place Signed

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

**APPROVED FOR ENTRY:**

\_\_\_\_\_  
*Attorney for Mother*

\_\_\_\_\_  
*Attorney for Father*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Phone and BPR Number*

\_\_\_\_\_  
*Phone and BPR Number*

*Note: The judge or chancellor may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan.*

**COURT COSTS (If applicable)**

Court costs, if any, are taxed as follows:

\_\_\_\_\_.

It is so ORDERED this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge or Chancellor

**Part I. Identification**

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column

Name of Mother or Parent 1:  
 Name of Father or Parent 2:  
 Name of non-parent Caretaker:  
 TCSES case #:  
 Docket #:  
 Court name:

	PRP	ARP	SPLIT
Name of Mother or Parent 1:			
Name of Father or Parent 2:			
Name of non-parent Caretaker:			
TCSES case #:			
Docket #:			
Court name:			

Name(s) of Child(ren)	Date of Birth	Days with Mother or Parent 1	Days with Father or Parent 2	Days with Caretaker

**Part II. Adjusted Gross Income**

Use Credit Worksheet to calculate line items 1d - 1e

- 1 Monthly Gross Income
- 1a Federal benefit for child
- 1b Self-employment tax paid
- 1c Subtotal
- 1d Credit for in-home children
- 1e Credit for not-in-home children
- 2 Adjusted Gross Income (AGI)
- 2a Combined Adjusted Gross Income
- 3 Percentage Share of Income (PI)
- 3a Means Tested Income only (Y/N)

	Mother or Parent1 \ Column A	Father or Parent 2 \ Column B	Nonparent Caretaker \ Column C
1 Monthly Gross Income	\$	\$	
1a Federal benefit for child	+	+	
1b Self-employment tax paid	-	-	
1c Subtotal	0.00	0.00	
1d Credit for in-home children	-	0.00	0.00
1e Credit for not-in-home children	-	0.00	0.00
2 Adjusted Gross Income (AGI)	\$ 0.00	\$ 0.00	
2a Combined Adjusted Gross Income	\$0.00		
3 Percentage Share of Income (PI)	0%	0%	
3a Means Tested Income only (Y/N)	N	N	

**Part III. Parents' Share of BCSO**

- 4 BCSO allotted to primary parent's household
- 4a Share of BCSO owed to primary parent
- 4b BCSO if Self Support Reserve (SSR) is applied
- 5 Each parent's average parenting time
- 5a Parenting Time Adjustment (68 or less days)
- 5b Adjusted BCSO (68 or less days)
- 6a Parenting Time Adjustment (92 or more days)
- 6b Adjusted BCSO (92 or more days)
- 7 Calculated BCSO

	Mother or Parent1	Father or Parent 2	Nonparent Caretaker
4 BCSO allotted to primary parent's household	\$ 0.00	\$ 0.00	\$ 0.00
4a Share of BCSO owed to primary parent	\$ 0.00	\$ 0.00	
4b BCSO if Self Support Reserve (SSR) is applied	N/A	N/A	
5 Each parent's average parenting time	N/A	N/A	
5a Parenting Time Adjustment (68 or less days)	N/A	N/A	
5b Adjusted BCSO (68 or less days)	N/A	N/A	
6a Parenting Time Adjustment (92 or more days)	N/A	N/A	
6b Adjusted BCSO (92 or more days)	N/A	N/A	
7 Calculated BCSO	\$ 0.00	\$ 0.00	

Exhibit B

**Part IV. Additional Expenses**

	Mother or Parent 1 \ Column A	Father or Parent 2 \ Column B	Nonparent Caretaker \ Column C
8a Children's portion of health insurance premium	\$	\$	\$
8b Recurring uninsured medical expenses	\$	\$	\$
8c Work-related childcare	\$	\$	\$
9 Total additional expenses	\$ 0.00	\$ 0.00	\$ 0.00
10 Share of additional expenses owed	\$ 0.00	\$ 0.00	
11 Adjusted Support Obligation (ASO)	\$ 0.00	\$ 0.00	

**Part V. Presumptive Child Support Order**

	OBLIGATION		
12 Presumptive Child Support Order (PCSO)	\$ 0.00	\$ 0.00	

\* Enter the difference between the greater and smaller numbers from Line 11 except in non-parent caretaker situations.

Current Order Flat %?  N (N / Y)

Modification of Current Child Support Order	13a Current child support order amount for the obligor parent	\$	\$	
	13b Amount required for significant variance to exist	\$ 0.00	\$ 0.00	
	13c Actual variance between current and presumptive child support orders	\$ 0.00	\$ 0.00	

**Part VI. Deviations and FC SO**

Deviations must be substantiated by written findings in the Child Support Order	14 Deviations (Specify):	\$	\$	
15 Adjusted for Minimum Order (Y/N)		N	N	
16 Final Child Support Order (FC SO)	\$ 0.00	\$ 0.00	\$ 0.00	
17 FC SO adjusted for Federal benefit, Line 1a, Obligor's column.	\$ 0.00	\$ 0.00	\$ 0.00	

**Comments, Calculations, or Rebuttals to Schedule**

**Preparer's Use Only**

Name: \_\_\_\_\_ Date: 8/15/2022  
 Title: \_\_\_\_\_

**Part I. Identification**

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column

Name of Mother or Parent 1: \_\_\_\_\_  
 Name of Father or Parent 2: \_\_\_\_\_  
 Name of non-parent Caretaker: \_\_\_\_\_  
 TCSES case #: \_\_\_\_\_  
 Docket #: \_\_\_\_\_  
 Court name: \_\_\_\_\_

PRP	ARP	SPLIT

**Part II. Other Children**

If a parent is claiming more than five children on line 3 or line 7, use the Additional Credit sheet to list information for each child.

Mother or Parent 1	Father or Parent 2

Parent Income Information

1 Applicable gross income from CS worksheet

\$ 0.00	\$ 0.00
---------	---------

In-Home Children

2 Below, list qualified children living in the parent's home (if none, skip to line 6):

Name(s) of Child(ren) for Mother or Parent 1		Date of Birth	Name(s) of Child(ren) for Father or Parent 2		Date of Birth

3 Number of qualified children living in the parent's home

# 0	# 0
-----	-----

4 Theoretical child support order (this parent's income on CS Schedule for number of children from line 3)

\$ 0.00	\$ 0.00
---------	---------

5 75% of theoretical child support order from line 4

\$ 0.00	\$ 0.00
---------	---------

Not-In-Home Children

6 Below, list qualified children not living in the parent's home (if none, skip this Part):

Name(s) of Child(ren)		Date of Birth	Name(s) of Child(ren)		Date of Birth

7 Number of qualified children not living in the parent's home

# 0	# 0
-----	-----

8 Average documented monetary support over last 12 months

\$	\$
----	----

9 Theoretical child support order (this parent's income on CS Schedule for number of children from line 7)

\$ 0.00	\$ 0.00
---------	---------

10a 75% of theoretical child support order from line 9

\$ 0.00	\$ 0.00
---------	---------

10b Allowable credit for not-in-home children

\$ 0.00	\$ 0.00
---------	---------



**Other Children (Continued from Credit Worksheet)**

**In-Home Children**

Below, list additional qualified children living in the parent's home:

Name(s) of Child(ren) for Mother or Parent 1	Date of Birth

Name(s) of Child(ren) for Father or Parent 2	Date of Birth

**Not-In-Home Children**

Below, list additional qualified children not living in the parent's home:

Name(s) of Child(ren) for Mother or Parent 1	Date of Birth

Name(s) of Child(ren) for Father or Parent 2	Date of Birth

# ORDER OF PROTECTION JUDICIAL BENCHCARD

TNCOALITION.ORG | 615.386.9406 | 800.289.9018

July 2019

## I. LEGISLATIVE PURPOSE OF THE ORDER OF PROTECTION ACT (T.C.A. § 36-3-618)

- Recognize the seriousness of domestic abuse as a crime to assure that the law provides a victim enhanced protection from domestic abuse.
- 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.
- Official response shall stress enforcing 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.

## II. EX PARTE ORDERS: ORDER WITHOUT RESPONDENT PRESENT

### Determine petitioner eligibility (T.C.A. § 36-3-601(5)/ T.C.A. § 36-3-602)

- Is the petitioner a domestic abuse victim? (relationship required)
  - Adults or minors who are current or former spouses;
  - Adults or minors who live together or who have lived together;
  - Adults or minors who are dating or who have dated or who have or who have had a sexual relationship;
  - Adults or minors related by blood or adoption;
  - Adult or minor children who are related or were formerly related by marriage;
  - Adult or minor children of a person in a relationship described above.
- Is the petitioner a sexual assault victim? (T.C.A. § 36-3-601(10)) (no relationship requirement for sexual assault victim) The petitioner has been subjected to, threatened with, or placed in fear of any form of:
  - Aggravated rape;
  - Rape;
  - Statutory Rape;
  - Rape of a Child;
  - Aggravated Sexual Battery;
  - Sexual Battery;
  - Sexual Battery by an Authority Figure.
- Is the petitioner a stalking victim? (T.C.A. § 36-3-601(11), T.C.A. § 36-17-315) (no relationship requirement for stalking victim) The petitioner has been subjected to, threatened with, or placed in fear of:

- 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.
- 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.
- 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 (significant mental suffering), and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- The petitioner and the respondent can be adults or minors.
- If the petitioner is a minor, the statute provides that the following may sign the petition: (T.C.A. 36-3-602(b))
  - At least one parent or the minor's guardian;
  - A caseworker, but in that case, the petition may not be filed against the minor's parent or guardian;
  - The Guardian ad litem if the court has appointed one;
  - The Department of Children's Services if DCS is a party.
- For good cause shown, the court may issue an ex parte order of protection pursuant to T.C.A. § 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 and that person has consented to the filing in writing (T.C.A. § 36-3-619)
- The law enforcement officer may seek the ex parte order on behalf of the person, regardless of the time of day or whether or not an arrest has been made. (T.C.A. § 36-3-619)

Exhibit C

- 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.

Note: There is no statute of limitations on the abuse for filing an order of protection, and there is no requirement to file a police report or other criminal charges to obtain order of protection relief. Venue is waived unless the respondent appears in court and objects to the venue. Venue may be waived and is waived when a defendant "defends upon the merits without first interposing an objection to improper venue." *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977), *Sw. Williamson Cnty. Comm. Ass'n v. Saltsman*, 66 S.W.3d 872, 882 (Tenn. Ct. App. 2001).

#### **Determine whether there is good cause (T.C.A. § 36-3-605)**

- Is there an immediate and present danger of abuse to the petitioner? Consider the following:
  - A history of violence;
  - Respondent's pattern of conduct;
  - Petitioner's injuries;
  - Petitioner's fear of retaliation;
  - Respondent's access to weapons;
  - Respondent's history of stalking;
  - Respondent's criminal record;
  - Respondent's use of drugs or alcohol;
  - Respondent's threats of suicide;
  - Respondent's history of mental illness;
  - Threats to attack the petitioner, the children, or other family members;
  - Threats to animals (pets);
  - Threats or attacks on family or household members.

#### **Court Costs (T.C.A. § 36-3-617)**

Notwithstanding any other provision of law to the contrary, no 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 of 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.

- There is no initial fee for a petition to the court for any action on an order of protection.
- 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 finds 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.

#### **Important!**

- The office of the clerk of court shall provide forms that may be necessary to seek a protection order (T.C.A. § 36-3-604).
- Courts shall use the Administrative Office of the Courts

forms. (T.C.A. § 36-3-604) [www.tncourts.gov](http://www.tncourts.gov).

- Ex Parte orders stay in effect until the time of the hearing on the matter. (T.C.A. § 36-3-605).
- Within fifteen (15) days of service of an order on the respondent a hearing shall be held. If a hearing is not held within 15 days, the ex parte order expires and the case assumes the posture of a case where no ex parte OP issued. See *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997)

- If the petitioner does not meet the standard of proof for the ex parte order, the judge is required to set a hearing for review. 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.
- If the ex parte order is dismissed, the judge must hear the pending petition.

#### **Relief Available:**

- Directing the respondent to refrain from committing or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;
- Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- Prohibiting the respondent from stalking the petitioner. (See above definition.)

#### **Enforcement of the Ex Parte Order:**

An ex parte order of protection can be enforced by arrest once the respondent has been served or has actual knowledge of the order. (T.C.A. §36-3-611) Note: Violations of ex parte orders of protection do not require physical contact.

#### **Enforcement Remedies of the Ex Parte Order:**

- Civil Contempt (T.C.A. § 36-3-610/T.C.A. § 36-3-612)
- Criminal Contempt (T.C.A. § 36-3-610/T.C.A. § 36-3-612)
- Warrantless Arrest (T.C.A. § 36-3-611(a))

### **III. ORDERS OF PROTECTION**

If the court finds that the Petitioner has proven the allegations in the petition by a preponderance of the evidence, then the court can grant certain protections to the petitioner against further domestic abuse, sexual assault, and stalking: (T.C.A. § 36-3-606) (Note that, depending upon the population of the county, "court" can mean a court of record with jurisdiction over domestic relation matters, the general sessions court, or a judicial commissioner. See T.C.A. §36-3-601.)

- Directing the respondent to refrain from committing domestic abuse, stalking, or sexual assault, or threatening to do the same;
- Prohibiting the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- Prohibiting the respondent from stalking the petitioner;
- 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;
  - Ordering this relief does not change ownership of the property.
- 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;

- Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties;
  - Courts should consider the history of domestic violence and the violent behavior of the respondent in setting visitation and craft custody orders that will protect the petitioner and the minor children.
- 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;
  - Child support should be set based upon the Tennessee Child Support Guidelines. The Guidelines allow for deviations.
- 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 may be punished as criminal or civil contempt;
- 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 be placed in the care, custody and control of the petitioner or in an animal foster situation;
- Directing the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter;
- 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 or if the court finds that continuing to reside in the rented or leased premises may jeopardize the life health or safety of the petitioner or the petitioner's children. This does not alter the terms, liability, or parties to the lease agreement;
- 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).
  - T.C.A. § 36-3-625 requires that a judge, upon issuing an order that complies with provisions of 18 U.S.C.S. § 922 (g) (8), order the respondent to terminate physical possession of firearms by any lawful means within 48 hours of issuance of the order.

**Note: Respondent must complete an Affidavit of Firearm Dispossession form and return it to the court.**

- The Court is not limited to the relief specifically enumerated in the statute. To be effective, Orders of Protection must include all necessary protection against future abuse, given the needs of the victim.
- Other remedies may include:
  - Payment of utilities;
  - Cost of replacement of locks;
  - Use of an automobile;
  - Return of immigration and other important papers;
  - Restitution for property damage.

## Findings

- Courts should make findings of fact regarding the order of protection. Findings should reflect the grounds for the order of protection; whether domestic abuse, sexual assault, or stalking.

## Important! Agreed Orders of Protection

- The Respondent and the Petitioner may enter into an agreed order of protection, or a court-approved consent agreement. This is no different than an order of protection that was not entered into by agreement. The same protections and enforcement remedies are still available, including prohibitions on weapons as set forth in T.C.A. § 39-17- 1351(c)(8) and T.C.A. § 39-17-1316(a)(1).

## Weapons

- A person under an order of protection cannot ship, transport, possess, receive, or transport a firearm. (18 U.S.C.S. § 922 (g)(8), T.C.A. § 36-3-625)
- T.C.A. § 36-3-625 requires that a judge, upon issuing an order that complies with provisions of 18 U.S.C.S. § 922 (g) (8), must:
  - Transfer possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours.
  - If the firearm is registered under the National Firearms Act, compiled in 26 U.S.C.S. §§ 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.
  - 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.
- Upon issuance of an order of protection that fully complies with 18 U.S.C.S. § 922(g)(8), the order shall include on its face the following disclosures:
  - 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;
  - 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

- Notice of the penalty for any violation of T.C.A. § 36-3-625(a) or T.C.A. § 39-17-1307(f).

- A person under an order of protection cannot have a permit to carry a handgun. (T.C.A. § 39-17-1351(c)(8))
- A person cannot sell a firearm to anyone who is prohibited by a qualifying order of protection. (T.C.A. § 39-17-1316(a)(1) and 18 U.S.C.S. § 922(d)(8))
- A person who possesses a firearm and is under a qualifying order of protection is subject to a class A misdemeanor. (T.C.A. § 36-3-625, T.C.A. § 39-17-1307, T.C.A. § 39-13-113)

#### IV. ENFORCEMENT REMEDIES AND VIOLATIONS

A violation of an order of protection could result in or all of the following:

- Civil Contempt: (T.C.A. §29-9-102)/T.C.A. § 36-3-610/T.C.A. § 36-3-612)
  - Imprisonment until the act is performed
  - May impose a civil penalty of \$50
  - Bond
- Criminal Contempt: (T.C.A. §29-9-103/T.C.A. § 36-3-610/T.C.A. § 36-3-612)
  - Imprisonment
  - Fine up to \$50
- Class A Misdemeanor (T.C.A. §39-13-113(g))
  - Fine not less than \$100 nor more than \$2,500
  - Any sentence of incarceration shall be served consecutively to sentence for any other offense that is based in whole or in part on the same factual allegations. However, sentence based out of same facts can be served concurrently.
- 5 or 10 Year Extension ( T.C.A § 36-3-605 (d))
- Aggravated Assault (T.C.A. § 39-13-102(c)).
  - If an order of protection is in place before the assault, aggravated assault becomes a Class C felony. (T.C.A. §39-13-102(c)) Stalking becomes Aggravated Stalking and is a Class E felony if there is an OP in effect at the time of the stalking. (T.C.A. §39-17-315(c)(1)(E))
- Unlawful Possession of a Firearm (T.C.A. § 36-3-625, T.C.A. § 39-17-1307)

Civil and Criminal Contempt are available for both the ex parte order and the order of protection. (T.C.A. § 36-3-610/ T.C.A. § 36-3-612)

Violation of Protective Order (T.C.A. § 39-13-113) only applies in cases where:

- The person received notice of the request for an order of protection or restraining order;
- The person had an opportunity to appear and be heard in connection with the order of protection or restraining order;
- The court made specific findings of fact in the order of protection or restraining order that the person had committed domestic abuse, sexual assault, or stalking.

**Note:** Tennessee law makes the violation of a protective order a misdemeanor crime of domestic violence.

#### V. EXTENSIONS OF THE ORDER OF PROTECTION (T.C.A. § 36-3-608)

Orders of Protection are ordered for a definite period of time not to exceed one year. However, orders can be extended upon motion. When extending an order of protection, the court should consider the following:

- Has the order of protection been effective in stopping the violence and keeping the respondent away?
- Does the petitioner fear that the respondent will continue the abusive behavior that resulted in the order of protection?

If the defendant is convicted of an order of protection violation, the order can be extended upon the petitioner's motion or the judge's own motion. (T.C.A. § 36-3-605(d))

The initial petition must have been served according to T.C.A. § 36-3-605(c).

- The order may be extended upon the petitioner's motion or sua sponte.
- If the respondent is found to be in violation of the order, the court may extend the order of protection up to five years or up to ten years on the second or subsequent violation. (T.C.A. § 36-3-605(d)). A party seeking a modification or extension only needs to prove the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence. See *Gibson v. Bikas*, No. E2017-00883-COA-R3-CV, 2018 Tenn. App. LEXIS 110, \*19 (Tenn. App. Feb. 28, 2018); *Wadhvani v. White*, No. M2015-01447-COA-R3-CV, 2007 Tenn. App. LEXIS 7, 2007 WL 27329 (Tenn. App. Jan. 3, 2007); *Cardwell v. Hutchinson*, No. E2009-02680-COA-R3-CV, 2010 Tenn. App. LEXIS 733, 2010 WL 4810671 (Tenn. App. Nov. 24, 2010)

**Note:** If a divorce complaint is filed, the order of protection shall remain in effect until the court in which the divorce action lies modifies or dissolves the order. (T.C.A. §36-3-603)

#### VI. Full Faith and Credit (T.C.A. § 36-3-606(e), 36-3-622)

- An order of protection issued pursuant to this part shall be valid and enforceable in any county of the state. T.C.A. § 36-3-606(e)
- Any valid order of protection from another state shall be afforded full faith and credit.
- For foreign orders to be valid in this state the respondent must have had notice and an opportunity to be heard before the order was issued.
- Regardless of whether a foreign order of protection has been filed in this state pursuant to T.C.A. § 36-3-622, a law enforcement officer may rely upon a copy of any such protection order and may also rely upon the statement of any person protected by the order that the order remains in effect.
- Mutual orders of protection shall not be enforceable against a petitioner unless the respondent filed a cross or counter petition, and the court made specific findings against the petitioner.

# STALKING JUDICIAL BENCHCARD

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July 2022

## How do you determine if someone is a victim of stalking?

- A stalking victim is any person, regardless of relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of **stalking**, defined in T.C.A. § 39-17-315 as 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.**
- Course of Conduct means a pattern of conduct composed of a series of two (2) or more separate, non-continuous 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.

Harassment means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact (for example, following, appearing at workplace, sending or posting electronic communications) 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.

Emotional distress means significant mental suffering that may but does not necessarily require medical or other professional treatment or counseling.

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: (1) following or appearing within the sight of that person, (2) approaching or confronting that person, (3) appearing at that person's workplace or residence, (4) entering onto or remaining on property owned, leased, or occupied by that person, (5) contacting that person by telephone, (6) sending to that person mail or any electronic communications by any means, (7) placing an object on, or delivering an object to, property owned, leased, or occupied by that person.

## Victims of stalking are entitled to seek an order of protection.

Any person who reasonably believes they are a victim of an offense under T.C.A. § 39-17-315, (stalking, aggravated stalking, and especially aggravated stalking) 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. T.C.A. 36-3-606.

## What relief is available to protect the petitioner of an order of protection?

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 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.

## Jurisdiction for prosecution of stalking

If one or more elements of an offense are committed in one county and one or more elements in another or on the boundaries between two counties, the offense may be prosecuted in either county. T.C.A. § 39-11-103

## Criminal penalties and sanctions if the defendant is convicted of stalking.

Stalking is a Class A misdemeanor; however, 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.

Aggravated stalking is a Class E felony.

A person commits aggravated stalking who commits the offense of stalking and in the course and furtherance of stalking: (1) displays a deadly weapon; (2) the victim of the

# DOMESTIC VIOLENCE & FIREARMS JUDICIAL BENCHCARD

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July 2019

## I. TENNESSEE FIREARMS PROHIBITIONS

A person commits an offense who carries, with the intent to go armed, a firearm or a club. T.C.A. § 39-17-1307(a)(1)

A person commits an offense who carries, with the intent to go armed, a handgun at a place open to the public where one or more persons are present. T.C.A. § 39-17-1307(a)(2)(C).

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.

T.C.A. § 39-17-1307 (c)(1)(A-C)

The following persons are guilty of a violation of T.C.A. § 39-17-1307 if found in possession of a firearm defined in T.C.A. § 39-11-106(a):

- A person convicted of a felony "crime of violence," as defined in T.C.A. § 39-17-1301, an attempt to commit a felony "crime of violence" or a felony involving use of a deadly weapon;
- A person convicted of a felony drug offense;
- A person 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;
- A person under a qualifying order of protection as defined in 18 U.S.C. § 922(g)(8); or
- A person who is prohibited from possessing a firearm under any other provision of state or federal law.

\*\*Note: The U.S. Supreme Court has held, "...a state weapons limitation activates the uniform federal ban on possessing any firearms at all. Even if a State permitted an offender to have the guns he possessed, federal law uses the State's determination that the offender is more dangerous than law-abiding citizens to impose its own broader stricture." See *Caron v. United States*, 524 U.S. 308, 308, 118 S. Ct. 2007, 2008-09, 141 L. Ed. 2d 303 (1998).

## II. ORDERS OF PROTECTION

A defendant/respondent who is under a qualifying order of protection may not possess a firearm according to federal and Tennessee law. 18 U.S.C. § 922(g)(8); T.C.A. § 36-3-625(a)(1).

A qualifying order of protection pursuant to 18 U.S.C. § 922(g)(8) requires the Petitioner be an intimate partner of the Respondent. An intimate partner (18 U.S.C. § 921(a)(32)) is a person who falls within the following relationships::

- a spouse of the respondent;
- a former spouse of the respondent;
- an individual who is a parent of a child of respondent;
- or an individual who lives or has lived with the respondent.

• **Note:** Petitioner can also be a child of an intimate partner. (T.C.A. § 36-3-602)

A qualifying order of protection also requires:

- Respondent received actual notice and had an opportunity to be heard. This means that the respondent received proper service under T.C.A. § 36-3-605(c). For this reason, an ex parte order would not qualify.
- The order restrains the respondent from harassing, stalking, or threatening an intimate partner, child of an intimate partner OR the order restrains respondent from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- The order contains a finding that such person represents a credible threat to the physical safety of such intimate partner or child OR the order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.



Judges should follow the relationship requirements listed in T.C.A. § 36-3-601(5) when deciding whether or not to issue an order of protection. Not all orders of protection issued under Tennessee law will fall under the firearms prohibition.

## Firearms Dispossession



The court must order the respondent to terminate physical possession of firearms by any lawful means within 48 hours of the issuance of an order of protection that complies with 18 U.S.C. § 922(g)(8). T.C.A. § 36-3-625.

An example of a "lawful means" is transferring possession of

the firearms to a third party not prohibited from possessing weapons.

If the respondent possesses firearms as business inventory or firearms that are registered under the National Firearms Act, there are additional statutory provisions which may apply. T.C.A. § 36-3-625.

### Affidavit of Dispossession

The respondent must obtain and complete an "Affidavit of Firearm Dispossession" form and return it to the court. The form can be found on the AOC's website ([www.tncourts.gov](http://www.tncourts.gov)).

### Penalties



There is no definite time for filing the affidavit, but judges should put a date certain in the order because failure of the respondent to turn in the affidavit of dispossession may result in criminal charges against the respondent.

A violation of T.C.A. § 36-3-625 is a Class A misdemeanor, and each violation shall constitute a separate offense.

The violation can also constitute an offense under T.C.A. § 39-13-113(h) and T.C.A. § 39-17-1307(f). The respondent may be charged and convicted under any or all sections as separate offenses.

### Regain Possession

When the order of protection or any successive Order is no longer in effect, the respondent may lawfully regain possession of the firearm without action by the court. T.C.A. § 36-3-625.

## III. MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE (MCDV)

Tennessee has adopted the federal definition of the misdemeanor crime of domestic violence (MCDV), and it has the following elements (T.C.A. § 39-17-1351; 18 U.S.C. § 921(33)):

- is a misdemeanor under Federal, State or Tribal law;
- includes the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- was committed by a current or former spouse, parent, or guardian of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian;
- or by a person similarly situated to a spouse, parent, or guardian of the victim.

The misdemeanor crime of domestic violence (MCDV) that can cause a ban on firearms possession, does not have to have as one of its elements that the defendant and the victim are in one of the qualifying relationships set out in 18 U.S.C. § 921(a)(33), 27 CFR 478.11. United States vs. Hayes, 555 U.S. 415(2009). Example: the predicate MCDV offense could have been a battery that did not require a domestic relationship between the victim and offender.

## Firearms Prohibition

Persons who have been convicted in any court of a qualifying MCDV generally are prohibited under federal and state law from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); T.C.A. § 39-17-1307.

## Domestic Assault

In general, a domestic assault is considered to be a misdemeanor crime of domestic violence. Be aware, however, that NOT EVERY domestic assault is a MCDV. There are some relationships that fall within the definition of domestic assault, but fall outside the relationships required by the misdemeanor crime of domestic violence, i.e., dating relationships.

However, those convicted under Tennessee's Domestic Assault statute are prohibited from possessing firearms due to the language in T.C.A. § 39-13-111(c)(6).

### Penalties

A person convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon, or who has been convicted of a felony drug offense who possesses a firearm, may be convicted of a violation of T.C.A. § 39-17-1307.

The handgun carry permit of a person convicted of domestic assault is required to be revoked. T.C.A. § 39-17-1352.

## IV. EXEMPTIONS AND EXCEPTIONS

### A. Law Enforcement and Military Personnel

State law does not have an exemption to the firearm prohibition for:

- military or law enforcement personnel who are under a qualifying order of protection; or
- military or law enforcement personnel who have been convicted of domestic assault or another misdemeanor crime of domestic violence.

This means it is an offense for a law enforcement officer to carry a service firearm even when on duty while under a qualifying order of protection or after having been convicted of domestic assault.

### B. Types of Firearms

In Tennessee, a firearms prohibition applies to possession of most types of firearms. Please note that a new definition of firearms excepts "antique firearms" as defined in T.C.A. § 39-11-106(a) [2019 Public Chapter 279]



# SEXUAL ASSAULT JUDICIAL BENCHCARD

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July 2022

## 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.