

# Legislative Update

## 112<sup>th</sup> General Assembly

Tennessee General Sessions Judicial Conference

Nashville – October 2021

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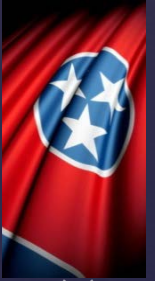


4/29/21

# Part I Budget

HOUSE

112th GENERAL ASSEMBLY - 31st LEGISLATIVE DAY HB1153



Appellate and Trial Courts .....	\$	71,569,500.00
Supreme Court Buildings.....		2,824,800.00
Child Support Referees .....		962,700.00
Guardian Ad Litem.....		11,047,500.00
Indigent Defendants' Counsel.....		41,800,700.00
Civil Legal Representation Fund.....		3,327,900.00
Court Interpreter Services.....		2,454,100.00
Verbatim Transcripts.....		4,933,200.00
Tennessee State Law Libraries .....		74,500.00
Council of Juvenile and Family Court Judges.....		60,300.00
Judicial Conference .....		373,700.00
Judicial Programs and Commissions.....		413,500.00
State Court Clerks' Conference .....		260,100.00
Administrative Office of the Courts .....		12,029,000.00
Appellate Court Clerks.....		1,050,600.00
Board of Law Examiners.....		1,026,500.00
Board of Professional Responsibility .....		3,974,600.00
Tennessee Lawyers Assistance Program .....		534,100.00
Continuing Legal Education.....		981,000.00
Client Protection Fund .....		208,500.00
 Total Title II .....	\$	 159,906,800.00



# Part II

## Major Bills



# Alternatives to Incarceration Act

PC409 (Johnson/Lamberth)

expands judicial discretion for sending to recovery court for misdemeanor assault

Limits probation length:

- Lowers cap to 8 years for single conviction
- Lowers cap to 10 years for multiple convictions

Eliminates practice of stacking sentence terms

Limits single instances of technical violations from being used as the sole basis for revocation

Limits shock incarceration for technical violations



# Reentry Success Act

PC410 (Johnson/Lamberth)

Changes current parole law and focuses on inmates leaving prison

Creates presumption of parole eligibility for those with non-violent and low level felonies

Mandatory supervision – provides monitoring of parolees.

Accreditation stipends to develop courses to help with reentry



# Use of Force reform – No “no-knock”

PC489 (Bell/Curcio)

No choke hold unless officer reasonably believes deadly force is authorized

Law enforcement agencies shall develop a policy regarding de-escalation

Officer should intervene and report excessive force

**A magistrate shall not issue a “no knock” search warrant, which expressly authorizes a peace officer to dispense with the requirement to knock and announce the peace officer’s presence prior to execution of the warrant.**



# Restitution First



## PC413 (Stevens/Doggett)

New allocation formula for money paid into court matters adjudicated on or after January 1, 2022:

- First money paid shall be toward restitution of the victim (if any)
- Once restitution paid in full, next money shall be toward payment of litigation taxes
- Once lit tax paid in full, next money shall be toward payment of costs
- Once costs paid in full, next money shall be toward payment of the fine





# Constitutional Carry



PC108 (Johnson/Lamberth)

Open or concealed handgun is ok, if:

- 21y/o (or 18 and veteran or active duty)
- Person lawfully possesses the handgun; AND
- Person is in a place where he/she is lawfully present

Includes enhanced penalties for theft of a firearm and unlawful possession



# Funding for 32<sup>nd</sup> Judicial District

PC581 (Hensley/Curcio)

An employee of the twenty-first judicial district who transfers to the same position in the thirty-second judicial district as of September 1, 2022, must retain the same level of salary and benefits, subject to appropriation by the general assembly in the annual appropriations act.



# TnCIS Data



PC446 (Haile/Hawk)

(3) The AOC shall provide each court clerk in a county that has not installed TnCIS with a list of the data that is required under Rule 11, § II of the Rules of the Supreme Court of Tennessee or state law. The AOC and court clerks shall coordinate efforts to ensure that the court clerks submit the required data by January 1, 2022,

# Part III

## Criminal Law



# Expunction Expansion

PC539 (Haile/Curcio)

*AOC list of offenses distributed.*

*Notification added to Affidavit of Complaint*



# Expunction Notification

## PC358 (Gilmore/Hardaway)

IF PRACTICABLE, a judge shall, at the time of sentencing, notify a person convicted of an offense that is eligible for expunction of:

- The person's eligibility to have all public records of conviction destroyed in the manner set forth in § 40-32-101; AND
- The time period after which the person can petition for expunction of the offense.

AOC shall provide the judges with a reference document.



# Time served for probation revocation when serving multiple concurrent probation sentences

SB622/HB1183 (Bell/Curcio)

If a person is serving 2 or more concurrent probationary sentences and the person's probation is revoked on 1 probationary sentence,

Then the person must receive credit for the time served as a result of that probation revocation against any other concurrent probationary sentence that is subsequently revoked in any jurisdiction in this state



# Remote testimony of forensic analyst

PC501 (Rose/Ogles)

The court may permit remote testimony by a forensic analyst in any criminal proceeding only if:

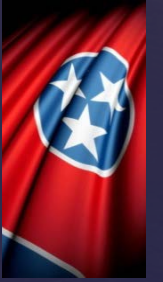
- 1) The state has provided a copy of any report produced by the forensic analyst that the state is seeking to admit into evidence through remote testimony to the defendant at least fifteen (15) days prior to the proceeding;
- 2) The defendant agrees to permit remote testimony;
- 3) The court finds that the defendant's agreement was knowing and voluntary; and
- 4) The court and the state agree to permit remote testimony.

Any remote testimony conducted under this section must allow all parties to observe the demeanor of the analyst as the analyst testifies in a similar manner as if the analyst were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant has a full and fair opportunity for examination and cross-examination of the analyst.





# Boating Under the Influence



## PC434 (Massey/Carr)

Aligns penalties for boating under the influence with the penalties for driving under the influence.

Clarifies that the offenses of vehicular assault, aggravated vehicular assault, vehicular homicide, and aggravated vehicular homicide may be committed by a person boating under the influence.



# Safe Seniors Act



## PC500 (Rose/Keisling)

TCA § 39-13-202 – physical abuse and aggravated abuse of an elderly or vulnerable adult added to First degree murder

TCA § 39-13-502 & 503 – vulnerable adult with intellectual disability added to aggravated rape and rape if defendant knows or has reason to know

TCA § 39-15-504 – on state’s motion to preserve victim testimony, court shall set a hearing within 15 days. Date of deposition must be within 60 days of the original motion.

TCA § 39-15-505 – state may request the motion to preserve victim testimony in any court – juvenile, general sessions, criminal, or circuit – having jurisdiction over the accused and may initiate the motion at any state of the proceedings.



# Safe Seniors Act (Cont.)



## PC500 (Rose/Keisling)

TCA § 39-15-506 – Conviction for an *attempted* crime defined in the Elderly and Vulnerable Adult Protection Act can be added to Dept. of Health registry at discretion of the court.

TCA § 39-15-506 – Circuit, General Sessions, and Chancery Courts shall have jurisdiction over proceedings arising under this part

TCA § 40-35-115 – Multiple convictions may be consecutive court finds by preponderance that defendant is convicted of 2 or more offenses involving sexual exploitation of an elderly or vulnerable adult with consideration of aggravating circumstances

TCA § 40-11-150 – crimes involving neglect or agg neglect of an elderly or vulnerable adult; and crimes involving abuse or agg abuse – added to list of crimes which require a judge to review factors listed in 40-11-150

TCA § 40-11-150(k)1 – judge shall not release within 12 hours of the arrest, unless he/she finds the offender is not a threat to the alleged victim

# Stopping Addiction and Fostering Excellence (SAFE) Act



PC309 (Haile/Curcio)

(d) (1) A licensed or certified service provider, judge, or magistrate shall not refer an individual, who is appropriate for housing in a recovery residence to support the individual's recovery from a substance use disorder, to a recovery residence, including a recovery residence owned or operated by the referent, that is not recognized or certified by an organization, or funded by a state or federal department or agency.

4) Any judge or magistrate who violates subdivision (d)(1) is subject to disciplinary action by the board of judicial conduct pursuant to title 17, chapter 5, part 3.

# Drag Racing Penalty



PC573 (Kelsey/Gillespie)

*Increases penalty  
from Class B to a  
Class A  
Misdemeanor*



# Assault of First Responder to now include nurses.



PC458 (Gilmore/Chism)

*Discharging or attempting to discharge official duties.*



# Safe At Home

PC No. 620 (2020)

PC No. 420 (2021)

- ▶ Confidential address
- ▶ For victims of abuse and human trafficking
- ▶ SOS receives the mail for victims so abusers cannot find them



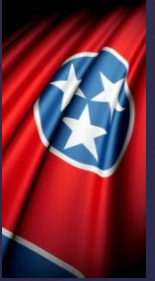
# Part IV

## Civil Law





# Lifetime Order of Protection



PC60 (Bell/Lamberth)

*New form by AOC*

A victim of a felony offense under Title 39, chapter 13...

- part 1 (assaultive offenses),
- 2 (criminal homicide),
- 3 (kidnapping and false imprisonment),
- or 5 (sexual offenses)...

may file a petition for a Lifetime Order of Protection against the offender who was convicted of the offense.

<b>Lifetime Order of Protection</b> Pursuant to T.C.A. § 36-3-6 <input type="checkbox"/> Amended Order <input type="checkbox"/> Petitioner is under 18				Case # (the clerk fills this in): _____	
In the _____ Court of _____ County, TN					
Petitioner (person needing protection) _____ first middle last					
Respondent's Information (person you want to be protected from): _____ first middle last date of birth (MM/DD/YYYY)					
street address city state zip					
Respondent's Employer: _____ Employer's name Employer's phone #					
Describe Respondent:					
Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Other: _____	Hair <input type="checkbox"/> Black <input type="checkbox"/> Grey <input type="checkbox"/> Blond <input type="checkbox"/> Bald <input type="checkbox"/> Brown <input type="checkbox"/> Other: _____	Eyes <input type="checkbox"/> Brown <input type="checkbox"/> Hazel <input type="checkbox"/> Blue <input type="checkbox"/> Green <input type="checkbox"/> Grey <input type="checkbox"/> Other: _____	Height – Weight – SSN – Other	
				Height	Weight
				Scars/Special Features	
				Phone Number	
Petitioner's relationship to the Respondent (Check all that apply):					

# Residence of incarcerated individual for purposes of appointing a conservator

PC133 (Johnson/Lamberth)



- (A) The county of residence of a person incarcerated in a department of correction facility is the county in which the facility is located; and
- (B) The county of residence of a person involuntarily hospitalized in an institution of the department of mental health and substance abuse services is the county in which the institution is located.

# Use of Force Proceedings - STAY

PC387 (White/Todd)

If there is a criminal investigation or criminal proceeding based on defendant's use or threatened use of force...

And defendant requests a stay of civil proceedings...

And judge determines that a relevant criminal investigation or criminal proceeding is ongoing...

The court shall grant a stay of civil proceedings until the conclusion of the criminal investigation or criminal proceeding



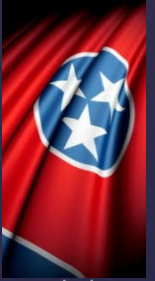
# Use of Force Proceedings – NEW HEARING

In civil action, defendant may assert in any responsive pleading or by motion, that:

- 1) Use of force was justified and permitted;
- 2) Defendant has immunity from civil liability;
- 3) Because of immunity, plaintiff cannot state a cause of action upon which relief can be granted; AND
- 4) Defendant requests a hearing to determine if the civil action should be dismissed for this reason.



# Use of Force Proceedings - DISMISSAL



Court shall have hearing and issue decision within 40 days of hearing

During this time all civil action is stayed



Sole issue at hearing is whether defendant used force or threatened use of force in a manner permitted by TCA § 39-11-611 – 39-11-614 or § 29-34-201 and is therefore immune from civil liability

Burden of proof is initially on defendant to “present sufficient admissible evidence to fairly raise the issue of whether the use of force was justified”

If court finds this, a presumption of immunity is created and BOP shifts to plaintiff

If court finds by a preponderance that the use of force was justified the case shall be dismissed with prejudice for failure to state a claim

# Petition for Conservator

PC84 (Jernigan/Lundberg)

The petition must also include current copies of the following reports on the proposed conservator:

- (A) A search of the department of health's registry of persons who have abused, neglected, or misappropriated the property of vulnerable persons, established by title 68, chapter 11, part 1 O; and
- (B) A search of the national sex offender registry maintained by the United States department of justice;



# Severe Child Abuse addition



PC508 (Roberts/Littleon)

Knowingly allowing a child to be within a structure where any of the following controlled substances are present and accessible to the child:

- (i) Any Schedule I controlled substance listed in § 39-17-406;
- (ii) Cocaine;
- (iii) Methamphetamine; or
- (iv) Fentanyl.

*Grounds for termination of parental rights.*

# Part V

## Next Year





# Bail Summer Study – Sept. 2021



[https://tnga.granicus.com/MediaPlayer.php?view\\_id=627&clip\\_id=25434](https://tnga.granicus.com/MediaPlayer.php?view_id=627&clip_id=25434)

- ❑ Bail bondsmen are necessary, but they need more oversight and regulation;
- ❑ The state needs more uniform and robust data regarding pre-trial release and failure to appear;
- ❑ Bail hearings need to happen faster, and certain general sessions judges may need to meet more often\*;
- ❑ Underlying problems (e.g. mental health and substance abuse issues) may contribute more to jail overcrowding rather than cost of bail.

# Indigent Determination

_____ _____ _____ Court County Tennessee	<b>UNIFORM AFFIDAVIT OF INDIGENCY</b> page 1 of 2	Case Number
_____ vs. _____		

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

**PART I**

1. Full Name: \_\_\_\_\_ 2. Social Security No.: \_\_\_\_\_

3. Any other names ever used: \_\_\_\_\_ 4. Address: \_\_\_\_\_

5. Telephone Nos.: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_ (Other) \_\_\_\_\_

6. Are you working anywhere? Yes ( ) No ( ) Where \_\_\_\_\_

7. How much do you make? \_\_\_\_\_ (weekly, monthly, etc.) 8. Birth date: \_\_\_\_\_

9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)? Yes ( ) No ( )  
What is its value? \_\_\_\_\_ (weekly, monthly, etc.)

10. Do you own any property (house, car, bank acct., etc.): Yes ( ) No ( )  
What is its value? \_\_\_\_\_

11. Are you, or your family, going to be able to post your bond? Yes ( ) No ( )

12. Are you, or your family, going to hire a private attorney? Yes ( ) No ( )

13. Are you now in custody? Yes ( ) No ( )  
If so, how long have you been in custody? \_\_\_\_\_  
*(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)*

T.C.A. § 40-14-202

“judge must conduct a full and complete hearing as to the financial ability of the accused to obtain the assistance of counsel, and thereafter, make a finding as to the indigency of the accused.”

# Waiver of Lit Taxes

STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL

June 22, 2021

Opinion No. 21-10

Duty of Court Clerks to Report Judicial Waiver of Litigation Taxes to the Department of Revenue

Question 1

Does Tennessee Code Annotated § 67-4-605(c) require general sessions court clerks to report to the Department of Revenue all general sessions court judges who, pursuant to Tenn. Code Ann. § 40-25-123(b), suspend litigation taxes for indigent criminal defendants?

Opinion 1

Yes. Tennessee Code Annotated § 67-4-605(c) requires a court clerk, including the clerk of a court of general sessions, to report a judge's suspension of "any privilege tax on litigation." The statute contains no exceptions.

Question 2

If so, how does Tenn. Code Ann. § 67-4-605(b) apply to court clerks if they do not report general sessions court judges who suspend litigation taxes for indigent defendants?

Opinion 2

Tennessee Code Annotated § 67-4-605(b) has no application to court clerks who do not report a judicial suspension of litigation taxes. Section 67-4-605(b) applies only to a clerk who fails or refuses to *collect and pay over* to the Department of Revenue litigation taxes that have not

AG Opinion – June '21

Bill to change some of this is likely next year.

# Marsy's Law

Increased rights for victims in all criminal and juvenile cases

Final version opposed by DAs, TBI, Police Chiefs, Sheriffs. Their concerns:

- Too vague; not Tenn. Specific
- How much will it cost?
- Who will provide notice and how?
- Who will man the court systems?
- DA witness coordinators will not be able to do this.
- Not enough resources to extend to all criminal cases.
- Workload increase would be 500% or greater on DAs
- How to “enforce” – will a sentence be set aside?



Solicitor General's Office (SB350)

Waiving of home study for adoption (SB445)

Prohibition of law enforcement surveillance on private property (SB456)

Tennessee Uniform Real Property Transfer on Death Act (SB660)

Jury instructions to include: non-guilty verdict ok even if proven beyond a reasonable doubt (SB833)

Automatic seal of all trust litigation

Statewide Chancery Court

Pro se plaintiff screening process (HB337)

Abusive Civil Litigant database (HB186)

15 day window for defendant healthcare provider to provide notice of defective HIPAA or else be barred from raising defect



*Thanks for listening!*



If you have questions or comments, please contact us.

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