

DOMESTIC VIOLENCE AND FIREARMS BENCH CARD

July 2025

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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) (see exceptions - T.C.A. 39-17-1307(g)(1) – (3) & (f)(2) – (3)).

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).

Pursuant to T.C.A. § 39-17-1307(f)(1) and 18 U.S.C. § 922(g), it is a state and federal offense for a person convicted of a domestic violence offense, who is still subject to the disabilities of such conviction, including subject to an order of protection, to possess or purchase a firearm as defined in T.C.A. § 39-11-106(a).

For T.C.A. § 39-17-1307(f)(1), a person commits an offense who possesses a firearm as defined in T.C.A. § 39-11-106(a) and:

- Has been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921 or, and is still subject to the disabilities of such a conviction (Class A misdemeanor);
- Is, at the time of the possession, subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8); or
- Is prohibited from possessing a firearm under any other state or federal law. (Class A Misdemeanor)

Pursuant to T.C.A. § 39-17-1307(b), a person commits an offense who possesses a firearm, as defined in § 39-11-106, and:

- Has been 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 (offense is a Class B felony); or
- Has been convicted of a felony drug offense (offense is a Class C felony).

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

- Has been convicted of stalking as prohibited by § 39-17-315;
- Has been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within the prior ten (10) years or one (1) time within the prior five (5) years;
- Has been adjudicated as a mental defective, judicially committed to or hospitalized in a mental institution pursuant to title 33, or had a court appoint a conservator for the person by reason of a mental defect; or

- Is otherwise prohibited from possessing a firearm by 18 U.S.C. 922(g) as it existed on January 1, 2021.

An offense under subdivision Tenn. Code Ann. § 39-17-1307(h)(1) is a Class B misdemeanor.

EXCEPTIONS: A person commits an offense who possesses a handgun and has been convicted of a felony unless (T.C.A. § 39-17-1307(c)(1)(A) – (C)):

- (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.

NOTE: UNDER T.C.A. § 40-32-101(g)(1)(B)(iii), A MISDEMEANOR DOMESTIC ASSAULT CONVICTION (T.C.A. § 39-13-111) IS INELIGIBLE FOR EXPUNGMENT.

II. MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE

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(c)(16); 18 U.S.C. § 921(a)(33)):

- is a misdemeanor under Federal, State, Tribal, or local 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 predicate offense for misdemeanor crime of domestic violence (MCDV) which bans 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, 426(2009). Example: the predicate MCDV offense could be a battery which does not require a domestic relationship exist 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(f)(1).

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, T.C.A. § 39-13-111 are prohibited from purchasing or possessing a firearm.

If a defendant pleads guilty or is found guilty of a domestic violence offense, the judge shall immediately order the defendant to:

- Terminate physical possessions of all firearms within 48 hours of the conviction by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms; and
- Complete an affidavit of firearms dispossession form and return it to the court of conviction when all firearms have been lawfully dispossessed.

III. ORDERS OF PROTECTION - Firearms Dispossession

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.

Firearms Dispossession

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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).

Penalties

Judges should put a definitive date 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.

IV. EXEMPTIONS AND EXCEPTIONS

Law Enforcement and Military Personnel

State law does **not** have an exemption to the firearm prohibition for: (1) military or law enforcement personnel who are under a qualifying order of protection; or (2) 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.

Types of Firearms

In Tennessee, firearms prohibition applies to possession of most types of firearms. T.C.A. 39-11-106(a).

**Lifetime Order of Protection
Judicial Bench Card
July 2025**

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III. LIFETIME ORDER OF PROTECTION T.C.A. §36-3-627

(a)(1) Notwithstanding §36-3-608, **a victim of felony offenses under title 39, chapter 13, part 1, 2, 3, or 5** may file a petition for a lifetime order of protection against the offender who was convicted of the offense. Additionally, a victim of harassment under § 39-17-308(b) or aggravated stalking or especially aggravated stalking under §§ 39-17-315(c), (d) may also obtain a lifetime order of protection against the offender who was convicted of the offense.

(2) **“Victim”** has the meaning given in §40-38-203 — an individual who suffers direct or threatened physical, emotional or financial harm as the result of the commission of a crime or an immediate family member of a minor victim or a homicide victim.

(b) A petition filed by an unemancipated person under eighteen (18) years of age must be signed by one (1) of that person's parents or by that person's guardian. The petition may also be signed by a caseworker at a not-for-profit organization...[but] a petition signed by caseworker may not be filed against the unemancipated minor's parent or legal guardian. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed by the department or the guardian ad litem.

(c) Venue for a petition for an order of protection under this section, and all other matters relating to orders of protection, is in the county where the respondent resides or the county in which the offense occurred. If the respondent is not a resident of this state, the petition may be filed in the county where the petitioner resides.

(d) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition to be served upon the respondent at least five (5) days prior to the hearing. The notice must advise the respondent that the respondent may be represented by counsel. **In every case, unless the court finds that the**

action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, and notice of

hearing must also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent.

(e) At the hearing on the petition, the court shall, if the petitioner has proved the respondent was convicted of an offense listed in subsection (a) and that the petitioner was the victim of the offense, issue a lifetime order of protection that remains in effect until the death of the petitioner or the respondent. If the petitioner has not provided proof that respondent was convicted of such an offense and that the petitioner was the victim of the offense, the court shall dismiss the petition.

(f) An order of protection granted under this section must:

(1) Prohibit the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(2) Include a statement of the maximum penalty that may be imposed pursuant to § 36-3-610 for violating such order; and

(3) Be valid and enforceable in any county of this state.

(g) A lifetime order of protection is effective and must be served as provided in § 36-3-609.

(h)(1) Upon violation of a lifetime order of protection, the court may hold the defendant in civil or criminal contempt and, following a contempt hearing as provided in § 36-3-612, punish the defendant in accordance with the law. A judge of the general sessions court has the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(2) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates a lifetime order of protection a civil penalty of fifty dollars (\$50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court. Upon collecting the civil penalty imposed by this subdivision (h)(2), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

(i) An arrest for violation of a lifetime order of protection issued pursuant to this section may be with or without warrant. A law enforcement officer shall arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the violation occurred;

(2) The officer has reasonable cause to believe the respondent has violated or is in violation of a lifetime order of protection; and

(3) The officer has verified whether a lifetime order of protection is in effect against the respondent. If necessary, the officer may verify the existence of a lifetime order of protection by telephone or radio communication with the appropriate law enforcement agency.

**Order of Protection
Judicial Bench Card
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II. ORDER OF PROTECTION

(See **I. Ex Parte Orders of Protection Bench Card** for criteria to determine petitioner eligibility under T.C.A. § 36-3-601 / T.C.A. § 36-3-602)

Service T.C.A. § 36-3-605(c)

A copy of the petition and notice of the date set for the hearing on such petition, as well a copy of any ex parte order of protection shall be served upon the respondent at least five (5) days prior to such hearing.

An ex parte order, the original summons, and certified summons issued shall be personally served upon Respondent. However, if the respondent is not a resident of Tennessee, service of process shall be made by lodging, by the plaintiff, the ex parte order, the original summons, and certified summons with the secretary of state, who shall send the certified copy by registered or certified return receipt mail pursuant to §§ 20-2-215 and 20-2-216.

Service T.C.A § 36-3-609

(a) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), any subsequent order of protection shall be effective when the order is entered.

(b) (1) As used in subsection (a), service upon a party or counsel shall be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing. In order to complete service of process in a timely manner on a party who lives outside the county where the order was issued, the clerk may transmit the order to the sheriff in the appropriate county electronic transmission.

(2) Notwithstanding § 16-15-902, an ex parte order of protection may be served within one (1) year of issuance.

Findings

If the court finds that the Petitioner has proven the allegation of domestic abuse, stalking, sexual exploitation of a minor, sexual assault, a human trafficking offense, observation without consent, or unlawful photography by a preponderance of the evidence, the court may, at that time, issue and order of protection for a definite period of time, not to exceed one (1) year. See T.C.A. § 36-3-605(b).

Courts should make findings of fact regarding the order of protection. Findings should reflect the grounds for the order of protection; whether domestic abuse, stalking, sexual exploitation of a minor, sexual assault, a human trafficking offense, observation without consent, or unlawful photography.

Under T.C.A. § 36-3-606 the Order of Protection may:

- Direct the respondent to refrain from committing domestic abuse, stalking, sexual assault, a human trafficking offense, observation without consent, or unlawful photography, or threatening to do the same against the petitioner or the petitioner's minor children;
- Prohibit the respondent from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- Prohibit the respondent from stalking the petitioner, as defined in § 39-17-315;
- Grant 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.)
- Direct the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;
- Award 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.)

- Award 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.)

- Direct 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;

- Direct 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;

- Direct the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter;

- Direct 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;

- Order a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner pursuant to § 36-3-621.

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.

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). See T.C.A. § 39-3-606(f).

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.

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.

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, or receive any firearm. 18 U.S.C.S. § 922 (g)(8), T.C.A. § 36-3-625.

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.

Pursuant to T.C.A. § 36-3-625(a), 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.

ENFORCEMENT REMEDIES AND VIOLATIONS (T.C.A. §39-13-113; T.C.A. §36-3-610)

Violation of an order of protection or consent agreement may be punishable by civil or criminal contempt. T.C.A. § 36-3-610.

Civil Contempt:(T.C.A. §29-9-104)/T.C.A. 36-3-610/T.C.A. § 36-3-612)

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- 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 for up to 10 days
- Fine up to \$50

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)

Additionally, under T.C.A. § 39-13-113, it is a Class A misdemeanor to knowingly violate an order of protection or restraining order if:

- 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; and
- 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.

Violation of an Order of protection or restraining order is a class A Misdemeanor with a fine not less than \$100 nor more than \$2,500. T.C.A. §39-13-113(g).

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.

If an order of protection is in place before the assault, said assault becomes aggravated assault and a Class C felony. T.C.A. §39-13-102(c), T.C.A. § 39-13-102(e)(1)(A)(iv).

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).

EXTENSIONS OF THE ORDER OF PROTECTION (T.C.A. § 36-3-605)

Orders of Protection are ordered for a definite period of time not to exceed one (1) year. However, orders can be extended upon motion of the petitioner, or sua sponte. When extending an

order of protection, the court should consider the following:

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

If the respondent is properly served and afforded the opportunity for a hearing, and is found to be in violation of the order, the court may extend the order of protection up to five (5) years for the first violation or up to ten (10) 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. *Gibson v. Bikas*, 556 S.W.3d 796, 806 (Tenn. App. 2018); *Wadhvani v. White*, 2007 Tenn. App. LEXIS 7, 2007 WL 27329 (Tenn.App. 2007); *Cardwell v. Hutchinson*, 2010 Tenn.App. LEXIS 733, 2010 WL 4810671 (Tenn.App. 2010).

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

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. T.C.A. § 36-3-622.

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. T.C.A. § 36-3-622(b)(2).

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. T.C.A. § 36-3-622(g).

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. T.C.A. § 36-3-62(d).

**Sexual Assault
Judicial Bench Card
July 2025**

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I. SEXUAL ASSAULT VICTIM DEFINITION

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

II. SEXUAL ASSAULT OFFENSES IN TENNESSEE

A. Sexual Battery Classifications

Sexual Battery (T.C.A. § 39-13-505)

Sexual Battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances: force or coercion; sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent; the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or the sexual contact is accomplished by fraud.

The victim is incapable of consent if:

(1) The sexual contact with the victim occurs during the course of a consultation, examination, ongoing treatment, therapy, or other provision of professional services; and

(2) The defendant, whether licensed by the state or not, is a member of the clergy, healthcare professional, or alcohol and drug abuse counselor who was treating the victim for a mental, emotional, or physical condition. (Class E felony)

- **“Coercion”** means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

- **“Sexual contact”** includes the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification. T.C.A. § 39-13-501(6)

Aggravated Sexual Battery (T.C.A. § 39-13-504)

Aggravated Sexual Battery is unlawful sexual contact with any of the following circumstances: force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon; the defendant causes bodily injury to the victim; the defendant is aided or abetted by one or more other persons and force or coercion is used to accomplish the act or the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or the victim is less than 13 years of age. Aggravated Sexual Battery is a Class B felony.

Sexual Battery by an Authority Figure (T.C.A. § 39-13-527)

Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances: the victim was, at the time of the offense, at least 13 years of age but less than 18; or the victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and, the defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim

by virtue of the defendant’s legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or the defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual act. Sexual battery by an authority figure is a Class C felony.

Sexual Contact with a minor – by an Authority Figure (T.C.A. §39-13-509)

It is an offense for a defendant to engage in unlawful sexual contact with a minor when the minor is less than 18 years of age, the defendant is at least 4 year older than the victim; and the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant’s legal, professional, or occupational status and used the position of trust or power to accomplish the sexual contact; or the defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact. As used in this section, “sexual contact” means the defendant intentionally touches or kisses the minor’s lips with the defendant’s lips if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification. Sexual contact by an authority figure is a Class A misdemeanor with a mandatory minimum fine of \$1,000. Each instance of unlawful sexual contact shall be considered a separate offense.

B. Rape Classifications

Rape (T.C.A. § 39-13-503) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances: force or coercion; without the consent of the victim and the defendant knows or has reason to know that the victim did not consent; the defendant knows that the victim is mentally defective, mentally incapacitated, physically helpless, a vulnerable adult (defined in § 39-15-501) with an intellectual disability; 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, physically helpless, or a vulnerable adult; or (4) the defendant knows that the defendant is infected with HIV. Aggravated rape is a 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). If the defendant was an adult at the time of the offense, then the sentence must be death, imprisonment for life without possibility of parole, or imprisonment for life (T.C.A. § 39-13-522(b)(2) Effective July 1, 2024).

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).

- If the defendant was a juvenile at the time of the offense, then the sentence must be from within Range III, as set forth in title 40, chapter 35.
- If the defendant was an adult at the time of the offense, then the sentence must be death, or imprisonment for life without possibility of parole.

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(b).

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(a) – (c).

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, (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 pursuant to § 40-35-303 or judicial diversion pursuant to § 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(b)). 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(b)) 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 (48) hours after the presentment of the information or indictment, 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(d) 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, (2) to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or (3) 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 (filed under seal) to offer such evidence no later than ten (10) days before the trial, served on all parties, and include a description of the specific evidence and purpose for introduction.
- 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 18 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," statements of a child or children under the age of thirteen (13) years of age who are victims of such abuse, 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, sexual exploitation of a minor, sexual assault, or a human trafficking offense, 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.

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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 two-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 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(e)) 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: [r]ecruits, 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 [b]enefits, 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).

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.

Stalking Judicial Bench Card July 2025

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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(a)(4) 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** (T.C.A. § 39-17-315(a)(1)) 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.

Emotional distress (T.C.A. § 39-17-315(a)(2)) means significant mental suffering that may but does not necessarily require medical or other professional treatment or counseling.

Harassment (T.C.A. § 39-17-315(a)(3)) 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.

Unconsented contact (T.C.A. § 39-17-315(a)(5)) 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:

- (A) Following or appearing within the sight of that person;
- (B) Approaching or confronting that person in a public place or on private property;
- (C) Appearing at that person's workplace or residence;
- (D) Entering onto or remaining on property owned, leased, or occupied by that person;
- (E) Contacting that person by telephone;
- (F) Sending to that person mail or any electronic communications, including, but not limited to, electronic mail, text messages, or any other type of electronic message sent using the internet, websites, or a social media platform; or
- (G) 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. § 39-17-315(h).

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. T.C.A. § 36-3-606.

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(d).

Criminal penalties and sanctions if the defendant is convicted of stalking. T.C.A. § 39-17-315.

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. See T.C.A. § 39-17-315(b).

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:

- (A) Displays a deadly weapon;
- (B)
 - i) The victim of the offense was less than eighteen years of age at any time during the person's course of conduct, and the person is five or more years older than the victim; or
 - ii) The victim of the offense was sixty-five (65) years of age or older at the time during the person's course of conduct
- (C) Has previously been convicted of stalking within seven years of the instant offense;
- (D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or
- (E) At the time of the offense, was prohibited from making contact the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property, and the person knowingly violates the injunction, order or court-imposed prohibition.

Especially aggravated stalking is a Class C felony.

A person commits especially aggravated stalking who commits the offense of stalking or aggravated stalking, and (A) has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; (B) intentionally or recklessly causes serious bodily injury to the victim of the offense or to the victim's child, sibling, spouse, parent or dependent; or (C) the person is eighteen (18) years of age or older, and the victim of the offense was less than twelve (12) years of age at any time during the person's course of conduct.

Contempt for violation of the order of protection.

Upon violation of the order of protection or a court approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. T.C.A. § 36-3-610.

Criminal prosecution for violation of the order of protection

Violation of an order of protection is a Class A misdemeanor. See T.C.A. § 39-13-113.

The provisions of T.C.A. § 40-11-150(a) shall be considered upon arrest for violation of an order of protection to determine whether the defendant is: (1) a threat to the alleged victim; (2) a threat to public safety; and (3) reasonable likely to appear in court. The defendant shall be subject to the twelve-hour holding period authorized by 40-11-150(h) and shall not be released within twelve hours unless a magistrate or judge finds that the defendant is not a threat to the alleged victim. If there is such a finding and defendant is released prior to the twelve-hour hold, the official shall make reasonable efforts to contact the victim and inform the victim that the offender will be released prior to the conclusion of the twelve-hour hold period.

Bond requirements

The judge, upon finding a violation of an order of protection or a court approved consent order, shall require a bond of the respondent until such time as the order of protection expires. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required; however, **bond shall not be less than two thousand five hundred dollars (\$2,500)**. See T.C.A. § 36-3-610(b)(2).

Conditions of probation

Under T.C.A. § 39-17-315(e) if the court grants probation to a person convicted of a stalking offense, the court may keep the person on probation for a period not to exceed the maximum punishment for said offense. The court may, in addition to other punishment authorized by law, order the defendant to:

- (1) Refrain from stalking any individual during the term of probation;
- (2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;
- (3) Be evaluated to determine the need for psychiatric, psychological or social counseling and if determined appropriate by the court to receive such counseling;
- (4) If, as the result of such treatment or otherwise, the defendant is required to take medication, order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and
- (5) Submit to the use of an electronic tracking device, with the cost of the device and monitoring the defendant's whereabouts, to be paid by the defendant.

Determination whether stalking is a single offense or multiple offenses

Refer to T.C.A. § 39-17-315(k) to determine whether stalking is a single offense or multiple offenses. To determine if a course of conduct against the same victim is interrupted, the following events will trigger a new and separate offense:

- (A) The defendant being arrested for a stalking offense;
- (B) The defendant being found by a court to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or
- (C) The defendant is convicted of a stalking offense, any such conduct which occurs after that event commences a new and separate offense.

Ex Parte Order of Protection Judicial Bench Card July 2025

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I. EX PARTE ORDER OF PROTECTION ORDER WITHOUT RESPONDENT PRESENT

Determine petitioner eligibility (T.C.A. § 36-3-601(5), (12) – (13) / T.C.A. § 36-3-602)

Is the petitioner a domestic abuse victim? (relationship required)

Adults or minors who: (1) are current or former spouses; (2) live together or who have lived together; (3) are dating or have dated or who have or have had a sexual relationship; (4) are related by blood or adoption; (5) are related or were formerly related by marriage; (6) adult or minor children of a person in a relationship described above.

Is the petitioner a sexual assault victim? (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? (no relationship requirement for stalking victim) The petitioner 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 (T.C.A. § 39-17-315(a)(1)) 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; or one (1) instance of placing an electronic tracking device, without the consent of a person, on the person or in or on the person's property.

Harassment (T.C.A. § 39-17-315(a)(3)) 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 (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.

Is the petitioner a victim of sexual exploitation of a minor?

T.C.A. §39-17-1003 Sexual exploitation of a minor. It is unlawful for any person to knowingly possess material that includes a minor engaged in sexual activity; or simulated sexual activity that is patently offensive. T.C.A. §39-17-1004 Aggravated sexual exploitation of a minor. T.C.A. §39-17-1005 Especially aggravated sexual exploitation of a minor.

Is the petitioner a victim of unlawful photography?

T.C.A. §39-13-605 defines unlawful photography in two different ways but both start by determining if a person knowingly photographed, or caused to be photographed, and individual without prior consent or the consent of the parent or legal guardian of a minor. The first definition looks to see if an ordinary person would be offended or embarrassed, or if the photograph is focused on the intimate area of an individual and is considered offensive or embarrassing by the individual in the photograph, and the photograph was taken for the purpose of sexual arousal or gratification of the defendant. The second definition also looks to see if the photograph includes the unclothed intimate area of the individual and is considered offensive or embarrassing by the individual, and the photograph was taken to offend, intimidate, embarrass, ridicule, or harass the victim, and was disseminated, threatened to be disseminated, or permitted to be disseminated by the defendant to another person.

Is the petitioner a victim of a human trafficking offense?

T.C.A. §39-13-314 defines a human trafficking offense as the commission of any act that constitutes the criminal offense of: Involuntary labor servitude, under § 39-13-307; Trafficking persons for forced labor or services, under § 39-13-308; Trafficking for commercial sex act, under § 39-13-309; patronizing prostitution, under § 39-13-514(b)(3)(A); or Promoting the prostitution under § 39-13-515(c). T.C.A. § 39-13-316 defines aggravated human trafficking as the commission of any act listed above where the victim is under thirteen (13).

The Petitioner and/or the Respondent in an Order of Protection can be adults or minors.

Special considerations for petitions for minors:

A petition filed by an unemancipated minor must be signed by at least one parent or by the minor's guardian. A petition may also be signed by a caseworker for a nonprofit, such as a domestic violence shelter, 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, or a representative of the TN Department of Children's Services, if DCS is a party, may sign a petition for a minor. (T.C.A. 36-3-602(b)).

Law enforcement may initiate a petition for an ex parte order. (T.C.A. § 36-3-619(h))

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. 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.

Venue (T.C.A. § 36-3-602(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, sexual exploitation of a minor, sexual assault, human trafficking offense, observation without consent, or unlawful photography occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides. 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).

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.

Upon the filing of a petition, the courts may immediately, for good cause shown, issue an ex parte order of protection.

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.

Issuance of an ex parte order of protection (36-3-605)

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

If the petitioner does not meet the standard of proof – for good cause shown – for the ex parte order, the judge is required to set a hearing on the order of protection and shall cause a copy of the petition and notice of the date set

for the hearing to be served upon the respondent at least five (5) days prior to such hearing.

Relief Available upon issuance of an Ex Parte Order: T.C.A. 36-3-606(b)

- Directing the respondent to refrain from committing or threatening to commit domestic abuse, stalking, sexual exploitation of a minor, sexual assault, a human trafficking offense, observation without consent, or unlawful photography 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.)

- 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;

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. Such order may be enforced pursuant to chapter 5 of this title.

- Directing the respondent to attend available counseling programs that address violence and control issues of substance abuse programs. A violation of a protection order or part of such order that directs counseling pursuant to this subdivision (a)(8) 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 instead be placed in the care, custody or control of the petitioner or in an appropriate animal foster situation;

- Directing the respondent to immediately and temporarily vacate a residence shared with the petitioner, pending a hearing on the matter, notwithstanding any provision of this part to the contrary;

- 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 and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the petitioner or the petitioner's children. Nothing in this subdivision (a)(11) shall be construed as altering the terms of, liability for, or parties to such lease or rental agreement; or

- Ordering a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner pursuant to § 36-3-621.

Court Costs (T.C.A. § 36-3-617)

Notwithstanding any other provision of law to the contrary, no (domestic abuse victim, stalking victim, sexual assault victim, or victim of certain felony offenses 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. There is no initial fee for a petition to the court for any action on an order of protection.

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.

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, sexual assault victim, or a victim of specific felony offenses 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, sexual assault, or specific felony offense was false at the time the petition was filed.

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. IMPORTANT: While T.C.A. § 36-3-611 allows for an arrest to take place for violation of an ex parte order of protection after the respondent is served, T.C.A § 39-13-113 requires the respondent to have the opportunity to be heard (*i.e.*, the order of protection hearing has to have occurred) before a respondent can be criminally charged for violation of an order of protection or restraining order.

Enforcement Remedies of the Ex Parte Order:

Civil Contempt (T.C.A. § 36-3-610/ § 36-3-612)

Criminal Contempt (T.C.A. § 36-3-610/ § 36-3-612)

Warrantless Arrest (T.C.A. § 36-3-611(a))

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)
<http://www.tsc.state.tn.us>.