No. 23-5248

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN DOE #1, ET AL.,

Plaintiffs-Appellees,

v.

WILLIAM B. LEE, ET AL.,

Defendants-Appellants.

On appeal from the United States District Court
for the Middle District of Tennessee
No. 3:21-cv-590

Appellants' Opening Brief

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ORAL ARGUMENT REQUEST

Defendant-Appellant William B. Lee, sued in his official capacity as Governor of Tennessee, and Defendant-Appellant David B. Rausch, sued in his official capacity as Director of the Tennessee Bureau of Investigation (TBI), respectfully request oral argument to help resolve this appeal. The outcome below raises complex questions regarding Article III jurisdiction, the application of the *Ex Post Facto* Clause, and the remedial power wielded by federal district courts. Oral argument would aid the Court's consideration of these issues.

JURISDICTION

This lawsuit concerns the constitutionality of Tennessee's sex offender regulations. *See* Compl., R.1 at 18–19.[1] The district court had limited subject matter jurisdiction because this case "aris[es] under" the federal Civil Rights Act. 28 U.S.C. § 1331; *see infra* Arg. Parts I & III.

The district court issued a final judgment on March 2, 2023. *See* Judgment, R.136 at 2723. Governor Lee and Director Rausch filed a notice of appeal on March 24, 2023. *See* Notice, R.138 at 2727–29. This Court thus has jurisdiction to review the district court's "final decisions." 28 U.S.C. § 1291.

[1] Unless otherwise noted, record citations refer to the consolidated docket, No. 3:21-cv-590 (M.D. Tenn.). All record pincites refer to the "Page ID" numbers in the district court's ECF file stamps.

ISSUES

1. Did the district court exceed the limits placed on its jurisdiction by Article III and Tennessee's sovereign immunity?

2. Did the district court err by holding Tennessee's sex offender regulations violate the *Ex Post Facto* Clause?

3. Did the district court err by issuing a generally worded injunction and an advisory declaratory judgment?

INTRODUCTION

Binding precedent and sound logic compel reversal of the judgment below. Over the past three decades, Tennessee's elected leaders have passed a series of critical laws to regulate known sex offenders for the protection of the public, especially children. The lawmakers have been guided in that process by the decisions of the Supreme Court, this Court, other circuit courts, and their own best assessment of the relevant facts and issues. As a result of that guidance, the various enactments have all been well within the Tennessee General Assembly's prerogative to legislate in the interest of public safety.

The district court cast that effort aside. It started by holding that the entire relevant section of the Tennessee Code imposes retroactive criminal punishment in violation of the *Ex Post Facto* Clause. *See Does #1–9 v. Lee*, --- F. Supp. 3d ---, 2023 WL 2335639, at *17 (M.D. Tenn. 2023). It then ordered Tennessee's Governor and TBI Director to refrain from "enforc[ing] any provision" of these regulations against the plaintiff sex offenders and to "ensure that [they] are" taken off Tennessee's sex offender "registry and . . . not mistakenly treated as if they were" on it. Order, R.135 at 2721–22. The court then broadly declared "that the

retroactive application of Tennessee's sexual offender [regulations] to" these Offenders "would violate the . . . *Ex Post Facto* Clause." *Id.* at 2722.

Each of those decisions rests on legal error.

First, the district court exceeded its jurisdiction to adjudicate the Offenders' claims. The Offenders lacked standing to seek an injunction against Governor Lee. And standing aside, Tennessee's sovereign immunity prohibits the federal courts from hearing suits against the Governor or TBI Director. *See Wolfel v. Morris*, 972 F.2d 712, 718–19 (6th Cir. 1992). Although the Offenders can evade that immunity by seeking equitable relief against the enforcement of unconstitutional state laws, *see Whole Woman's Health v. Jackson* (*Whole Woman's II*), 142 S. Ct. 522, 532 (2021), Governor Lee has no authority to enforce Tennessee's sex offender regulations, and Director Rausch's authorities mainly relate to compiling and publishing information. Because Director Rausch does not enforce reporting mandates or prohibitions on where the Offenders may live, work, or be idle, the district court erred by addressing those restrictions in this case.

Second, the district court erred in its sweeping conclusion that all of Tennessee's codified sex offender regulations violate the Constitution's

Ex Post Facto Clause, U.S. Const. art. I, § 10, cl. 1. That Clause is a "limitation upon the powers of [State] Legislature[s]," which applies to individual enactments, not entire chapters of Code. *Dale v. Haeberlin*, 878 F.2d 930, 933 (6th Cir. 1989) (quoting *Marks v. United States*, 430 U.S. 188, 191 (1977)). This Court has already held that legislation requiring the reporting and publication of the Offenders' personal information is "not so punitive [in effect] as to negate" Tennessee's "intent to create a civil regulatory scheme" to promote public safety. *Doe v. Bredesen*, 507 F.3d 998, 1007 (6th Cir. 2007). Persuasive precedents from other circuits likewise support laws limiting sex offenders' access to former victims and children.

Third, the district court erred by awarding the Offenders unlawful and inequitable relief. The injunction imposed on Governor Lee does not settle a live controversy, *see R.K. ex rel. J.K. v. Lee*, 53 F.4th 995, 998–1001 (6th Cir. 2022), and the one imposed on Director Rausch is "broader than necessary to remedy [any] constitutional violation," *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1069 (6th Cir. 1998). The district court should have determined what specific legislative acts imposed retroactive punishment, and it should have prohibited enforcement of *those* acts in

"specific[]" and "detail[ed]" terms. *Union Home Mortg. Corp. v. Cromer*, 31 F.4th 356, 362 (6th Cir. 2022) (quoting Fed. R. Civ. P. 65(d)(1)).

The district court's most pronounced error, however, was its decision to grant declaratory relief against "the world at large." *Whole Woman's II*, 142 S. Ct. at 535 (quoting *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir. 1930)). That was no more than an overt advisory opinion, which the court lacked the power or equitable basis to issue. *See Safety Specialty Ins. v. Genesee Cnty. Bd. of Comm'rs*, 53 F.4th 1014, 1020–21 (6th Cir. 2022).

For any and all of these reasons, the judgment should be reversed.

BACKGROUND

All States track and regulate the conduct of convicted sex offenders. *Smith v. Doe*, 538 U.S. 84, 90 (2003). This was not always the case; it started around 1994. That summer, seven-year-old Megan Kanka of Hamilton Township, New Jersey, was lured into the home of a neighbor, where she was beaten, raped, and strangled to death. 142 Cong. Rec. 10,311 (1996) (statement of Rep. Zimmer).[2] Although this neighbor had

[2] Bound volumes of the Congressional Record are available electronically at https://www.govinfo.gov/app/collection/crecb.

already "been twice convicted of sex offenses against children," Megan's parents and "community had not been made aware of those convictions." *State v. Timmendequas*, 773 A.2d 18, 22 (N.J. 2001). The incident served as a national wake-up call.

Sex Offender Regulations

Before the end of that year, Megan's parents moved the New Jersey legislature to pass "Megan's Law," an act "requiring notification when sexual predators become neighbors." *Id.* In a related vein, Congress conditioned federal funding on each State's adoption of a system to record and disseminate information about convicted sex offenders. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038–42 (1994). Within two years, "'every State, the District of Columbia, and the Federal Government had [all] enacted some variation of' a sex-offender registry." *Nichols v. United States*, 578 U.S. 104, 106 (2016) (quoting *Smith*, 538 U.S. at 90).

The push to create and refine these laws was not a panic; it was a public reckoning. In 1989, eleven-year-old Jacob Wetterling had been "kidnapped, sexually assaulted, and murdered" by another "serial predator" in Minnesota. *Rassier v. Sanner*, Civil No. 17-938, 2017 WL

5956909, at *1 (D. Minn. Nov. 30, 2017). In 1993, twelve-year-old Polly Klaas had been "abducted, sexually assaulted, and murdered . . . by a career offender in California." 34 U.S.C. § 20901(11); *see People v. Davis*, 208 P.3d 78, 128–29 (Cal. 2009). In 1996, "nine-year-old Amber Hagerman was dragged off her bicycle" in Texas and found dead four days later, "'nude [and] face-down in a creek about four miles'" from the abduction site. Lisa Rodriguez, Note, *A National Amber Alert Plan: Saving America's Children*, 28 Seton Hall Legis. J. 169, 176–77 (2003) (quoting Body of Kidnapped Texas Girl is Found, N.Y. Times, Jan. 19, 1996, at A18).

These and other cases "focused public attention on this type of crime and resulted in public demand that government take stronger action" to prevent such incidents. H.R. Rep. No. 104-555, at 2 (1996). Indeed, the public was so concerned by "crimes against children involving sexual acts and violence," *id.*, that the federal version of Megan's Law — which mandated the state registries be published — passed the House without a single dissenting vote. *See* 142 Cong. Rec. 10,354–55 (1996). Congress would later "announce[] with moving specificity its desire to protect the public from those *past* offenders who had sexually assaulted [subsequent] victims." *United States v. Ross*, 848 F.3d 1129, 1139 (D.C. Cir. 2017)

(Millett, J., concurring in part, dissenting in part, and dissenting from the judgment).

That desire was well-founded. In the national-level debates, lawmakers cited data recording well over 100,000 abduction attempts by strangers in 1988 and some 405,000 cases of child sexual abuse in 1991 alone. *See, e.g.*, 139 Cong. Rec. 31,251–52 (1993) (statements of Reps. Ramstad and Hobson). In 1992, a "Department of Justice study of [eleven] jurisdictions and the District of Columbia reported that 10,000 [minors] were raped" and "[a]t least 3,000 were children under the age of [twelve]." 142 Cong. Rec. 8599 (1996) (statement of Rep. Jackson-Lee). Reports likewise indicated that "two-thirds of the nonfamily child abduction cases reported to polic[e] involve[d] sexual assaults." 139 Cong. Rec. 31,251 (1993) (statement of Rep. Ramstad). And the numbers were likely underinclusive; FBI estimates indicated "only [one] to [ten] percent of child molestation cases [were being] reported to police." 142 Cong. Rec. 10,314 (1996) (statement of Rep. Jackson-Lee).

The debates also focused heavily on sex offenders' compulsiveness and recidivism. *See id.* at 10,314–16 (statements of Reps. Lofgren, Watt, Upton, Bereuter, and Molinari); 139 Cong. Rec. 31,250 (1993) (statement

of Rep. Sensenbrenner). One cited study showed that the average offender against children would molest over 100 different victims in his lifetime. 139 Cong. Rec. 10,998 (1993) (statement of Rep. Ramstad). Another found that "[s]eventy-four percent of all convicted child abusers are repeat offenders." 139 Cong. Rec. 31,253 (1993) (statement of Rep. Hoyer). Lawmakers expressed similar concerns with respect to "rapists, women-beaters, [and] convicted violent stalkers." 140 Cong. Rec. 22,520 (1994) (statement of Rep. Dunn). And input from the National Institute of Mental Health and the National Center for Missing and Exploited Children (NCMEC) echoed those concerns. *See* 139 Cong. Rec. 31,253 (1993) (statement of Rep. Hobson); 142 Cong. Rec. 10,312 (1996) (Letter from Ernie Allen, President of NCMEC, to Rep. Zimmer).

Lawmakers stressed, based on evidence and experience, that sex offenders were not good candidates for rehabilitation. *See* 142 Cong. Rec. 7748 (1996) (statement of Sen. Biden); *id.* at 10,312 (statement of Rep. Schumer). At the same time, they "tend[ed] to be particularly transient, probably due to the need to conceal the darker side of their lives and seek out new victims." *Id.* at 7746 (letter from Teresa Kligensmith, NCMEC Manager of Legislative Affairs, to Sen. Gramm); *see id.* at 10,313

(statement of Rep. Schroeder); *see also, e.g.*, *United States v. Howell*, 552 F.3d 709, 711 (8th Cir. 2009) (discussing an offender who twice evaded surveillance by crossing state lines). Congress thus determined that the best way to protect the public from "the most serious sexual predators" was to make them "register[] with law enforcement officials for the rest of their lives." 142 Cong. Rec. 7748 (1996) (statement of Sen. Biden).

The courts sanctioned this approach. The question arose early on whether measures intended to regulate sex offenders were effectively increasing their sentences. *See* 139 Cong. Rec. 31,252 (1993) (statement of Rep. Fish). But federal courts respected the widespread legislative findings on recidivism and public safety. *See, e.g.*, *Smith*, 538 U.S. at 93, 103; *Hatton v. Bonner*, 356 F.3d 955, 966 (9th Cir. 2004); *Femedeer v. Haun*, 227 F.3d 1244, 1253 (10th Cir. 2000); *E.B. v. Verniero*, 119 F.3d 1077, 1104 (3d Cir. 1997). And they specifically held that States were not imposing punishment by "broad[ly] categori[zing]" offenders based on "the danger of recidivism," *Smith*, 538 U.S. at 102; requiring them "to register in person every [ninety] days," *Doe v. Pataki*, 120 F.3d 1263, 1285 (2d Cir. 1997); *see Hatton*, 356 F.3d at 966; publishing their personal information on the internet, *Femedeer*, 227 F.3d 1249–53; or compelling their

compliance with such regulations "for life," *United States v. Young*, 585 F.3d 199, 205 (5th Cir. 2009) (per curiam); *see Smith*, 538 U.S. at 98, 102; *Bredesen*, 507 F.3d at 1005.

Backed by those decisions and new evidence, legislators continued to fine-tune the regulatory regimes. In 2006, Congress passed the Adam Walsh Act, Pub. L. No. 109-248, 120 Stat. 587 (2006), which sorted offenders into three "tiers" based on the crimes they committed, *see id.* § 111. The States were required to collect information from the most dangerous offenders in person, every three months, for life. *See id.* §§ 112(a), 115(a)(3), 116. Any change of name, residence, or employment also required an in-person report within three business days. *See id.* § 113(c). The information then had to be disseminated on the internet, *see id.* § 118(a), and provided to the federal government and certain local organizations, *see id.* § 121(b). *See generally* 34 U.S.C. § 20901 *et seq.*

As before, considerations of sex offender recidivism and transience informed the legislation. *See United States v. Gould*, 568 F.3d 459, 472–75 (4th Cir. 2009) (citing legislative and academic authorities). Specifically, lawmakers expressed concern that some "[twenty] percent of sexual offenders" had been "'lost,' and there [was] a strong public interest in

finding them and having them register . . . to mitigate the risks of additional crimes against children.'" *Reynolds v. United States*, 565 U.S. 432, 442–43 (2012) (quoting H.R. Rep. No. 109-218, pt. 1, at 24 (2005)); *see also United States v. Ambert*, 561 F.3d 1202, 1214 (11th Cir. 2009) (discussing the debates); *Howell*, 552 F.3d at 716–17 (same).

Lawmakers also tried to evolve and respond to dangers posed by new technology. To that end, Congress passed the Keeping the Internet Devoid of Sexual Predators ("KIDS") Act, Pub. L. No. 110-400, 122 Stat. 4224 (2008), which brought the regulatory regimes further into the digital age. An accompanying report found that "[t]he increasing popularity of social networking websites, their ready availability to children, and the faceless, anonymous nature of online communications have made the Internet a source for sexual predators to use in soliciting minors." S. Rep. No. 110-332, at 2 (2008). A federally funded NCMEC study added that sexual solicitation of minors online was far from a rare occurrence. *Id.* The KIDS Act thus "fill[ed] a gap left by earlier sex offender registration laws" by "curtail[ing] the anonymity that sexual predators" would otherwise "enjoy while using Internet sites frequented by children." *Id.*

The John Does' Lawsuit

Tennessee followed Congress's lead in this area, enacting a series of laws that regulate the "John Doe" sex offenders who brought this consolidated action. Between 1982 and 1994, each of the plaintiff Offenders committed at least one "violent sexual offense" or "[]other qualifying crime" triggering regulation under Tennessee law. Tenn. Code Ann. § 40-39-202(30); *see* Defs' Resp. Fact Stmt., R.128 at 2655. For Doe #2 and Doe #4, it was rape. *See* Pls' Resp. Fact Stmt., R.125 at 2602–03. For Doe #8, it was aggravated rape of a minor. *See id.* at 2606. For Doe #7, it was seven separate counts of "lascivious acts" committed against "multiple children" under fourteen. *Id.* at 2605. In every case, the crime was committed before Tennessee began regulating sex offenders, *see* Defs' Resp. Fact Stmt., R.128 at 2655, and the law now subjects each Offender to a series of rules in three basic categories.

First, there are the reporting rules. *See* Tenn. Code Ann. §§ 40-39-203, 204. Initiated in 1994, *see* 1994 Tenn. Pub. Acts ch. 976,[3] and expanded in 2004, *see* 2004 Tenn. Pub. Acts ch. 921, these rules require

[3] Tennessee's session laws from 1997 to the present are available electronically at https://sos.tn.gov/publications/services/acts-and-resolutions. 1994 Tenn. Pub. Acts ch. 976 is included in the Addendum to this brief.

each Offender to appear quarterly at a local law enforcement agency and provide up-to-date information about himself, *see* Tenn. Code Ann. § 40-39-204(b)(1). This includes taking a current photograph and fingerprint profile, *see id.*, as well as disclosing his place and length of employment, *see id.* § 203(i)(7), residential addresses, *see id* § 203(i)(8), current vehicles, *see id.* §§ 203(i)(10)–(11), and other basic details about his life and convictions, *see id.* §§ 203(i)(2) (date and place of birth), 203(i)(13) (race), 203(i)(3) (social security number). When this information changes, the Offender must report the change to the local registering agency, typically within two or three business days. *Id.* §§ 202(32), 203(a)(4), 203(a)(7).

Second, there are the publication rules. Initiated mainly in 1997, *see* 1997 Tenn. Pub. Acts chs. 461, 466, these rules require the TBI to receive, compile, and distribute reported information, *see* Tenn. Code Ann. § 40-39-206(d). Specifically, an Offender's identity, physical traits, birthday, criminal history, home address, employer address, most recent photo, driver license number, vehicle tag numbers, date of most recent disclosure, and any outstanding arrest warrants must all be "place[d]" on the State's "internet home page." *Id.*[4] The TBI also operates a "toll-free

[4] https://sor.tbi.tn.gov/search.

telephone number" to disseminate this information, *id.*, and it distributes the information to community groups, state agencies, local law enforcement, and the federal government, *see id.* §§ 206(a), 214. The TBI may also share an Offender's information with email providers and social media companies for user-screening purposes. *See id.* § 203(m).

Third, there are the restrictions on access to children and former victims. Begun in 2003, *see* 2003 Tenn. Pub. Acts ch. 95, and expanded in 2008, *see* 2008 Tenn. Pub. Acts ch. 1164, these rules prohibit the Offenders from knowingly living, working, or idly lingering within 1,000 feet of a school, day care center, child-care facility, public park, playground, recreation center, or public athletic field, subject to certain exceptions. *See id.* §§ 211(a), 211(d), 211(e). Similar restrictions apply to approaching or interacting with a former victim. *See id.* § 211(b). Additional laws regulate the circumstances under which the Offenders may live with other sex offenders, *id.* § 211(h), live with children, *id.* § 211(c), be alone with children, *id.* § 211(k), work with or around children, *id.* § 215, or access public libraries, *id.* § 216.

To avoid lifetime compliance with these regulations, each of the Offenders sued Tennessee's Governor and TBI Director in federal court.

See, e.g., Compl., R.1 at 1–20. Because their lawsuits all asserted Tennessee's regime violates the *Ex Post Facto* Clause, the district court consolidated the actions onto a single docket. *See* Order, R.40 at 406. The Offenders then moved for summary judgment, *see* Pls' Mot. Summ. J., R.121 at 2559, and the district court granted the motion, *see* Opinion, R.134 at 2680–720; Order, R.135 at 2721–22; *see also Does #1–9*, --- F. Supp. 3d ---, 2023 WL 2335639 (publishing the opinion).

The District Court's Decision

Rather than analyzing the separate legislative acts that led to Tennessee's current regime, the district court lumped those acts together and focused on the relevant Code chapter in its "current form." 2023 WL 2335639, at *3. The court then proceeded to refer to the entire chapter as "the Act" and held it to be "punitive for *Ex Post Facto* Clause purposes." *Id.* at *17.

Relying almost exclusively on this Court's decision in *Does #1–5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016), the district court reasoned that Tennessee's regulations "'resemble[d] traditional shaming punishments'" and "exile." *Does #1–9*, 2023 WL 2335639, at *15 (quoting *Snyder*, 834 F.3d at 702). The court then faulted Governor Lee and Director Rausch

for not supporting the legislature's "poorly-defined interest in public safety" with "evidence that the Act makes future crimes less likely." *Id.* at *16. In the district court's view, "the [Offenders] ha[d] presented . . . a case that . . . falls squarely within the analysis of *Snyder*," compelling summary judgment in their favor. *Id.* at *17.

Turning to the issue of remedies, the district court concluded that "[t]here is no particular section, subsection, or clause of the [Code] that can be excised to create [a] constitutional status quo." *Id.* at *20. It thus remarked that "[l]egislating . . . is for legislators" and announced that it would "grant the full permanent injunctive relief requested by the [Offenders]." *Id.* at *21. As made clear in a subsequent order, this meant an injunction prohibiting Governor Lee and Director Rausch from "enforc[ing] any provision of" the relevant Code against the Offenders or "require[ing] any of [them] to comply with any portion of the [Code]." Order, R.135 at 2721. In addition, the court compelled the Governor and Director "to . . . take all reasonably necessary steps to ensure that the [Offenders] are (1) not included on Tennessee's sexual offender registry and (2) not mistakenly treated as if they were included on that registry by state, local, or other officials." *Id.* at 2721–22.

And the court did not stop there. Despite recognizing that Governor Lee and Director Rausch "need[ed] no further . . . admonish[ment]," the district court granted declaratory relief because "the effects and enforcement of the [Code] are not limited to the actions of" the Governor and TBI Director. *Does #1–9*, 2023 WL 2335639, at *22. The remedies order thus stated — for the apparent benefit of nonparties — that any "retroactive application of Tennessee's sexual offender [regulations] to [the Offenders] . . . would violate the . . . *Ex Post Facto* Clause." Order, R.135 at 2722.

Governor Lee and Director Rausch filed a timely Notice of Appeal. *See* Notice, R.138. For the reasons below, this Court should reverse.

ARGUMENT SUMMARY

The district court made multiple legal errors regarding jurisdiction, the merits, and remedies.

On jurisdiction, the district court should have dismissed the claims against Governor Lee and exercised only limited authority over the claims against Director Rausch. Because Governor Lee has not caused the Offenders' purported injuries, the Offenders lacked standing to sue him in federal court. And because both the Governor and TBI Director are covered by Tennessee's sovereign immunity, this lawsuit should have

been limited to an adjudication of Director Rausch's limited enforcement powers under the sex offender laws.

On the merits, the district court erred by holding Tennessee's sex offender regulations unconstitutional as a whole. Contrary to the district court's analysis, the *Ex Post Facto* Clause prohibits the imposition of retroactive punishment through specific legislative acts, not aggregated codes. In this case, none of Tennessee's legislative acts can rightfully be described as punitive, or even retroactive. Binding and persuasive precedents confirm that conclusion — including, in large part, *Snyder*.

Finally, on remedies, the district court granted relief that it lacked the power or equitable basis to issue. The black-letter limits of the court's jurisdiction and equitable discretion allowed it to enjoin *only* Director Rausch and *only* to the extent necessary to protect the Offenders' constitutional rights. But rather than heed these limits, the court issued a generally worded injunction from which no "ordinary person" could "ascertain . . . exactly what conduct is proscribed." *Union Home*, 31 F.4th at 362 (quoting *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016)). The court then piled a declaratory order atop that injunction to bind unidentified nonparties who have had no opportunity to defend themselves.

For these three fundamental reasons, the Court should reverse the decision below and remand for dismissal of Governor Lee and an entry of summary judgment in Director Rausch's favor.

ARGUMENT

I. The district court overstepped its narrow jurisdiction to adjudicate the Offenders' claims.

The district court's first error comes at threshold: with an improper assertion of power. Even when the parties fail to contest jurisdiction, federal courts "may not overlook" that issue at any level of litigation. *United States v. Alam*, 960 F.3d 831, 833 (6th Cir. 2020); *see Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493, 1497 (2022). This Court must therefore review de novo the district court's assumption of jurisdiction. *See Mitchell v. Maurer*, 293 U.S. 237, 244 (1934); *Hautzenroeder v. Dewine*, 887 F.3d 737, 740 (6th Cir. 2018). Here, the district court erred by rendering judgment against Governor Lee and by exceeding its limited jurisdiction to render judgment against Director Rausch.

A. Governor Lee does not belong in this lawsuit.

The district court erred by entering judgment against Governor Lee. The bounds of Article III, and Tennessee's sovereign immunity, should have precluded the court from doing so.

1. The Offenders cannot trace any injuries to Governor Lee's conduct.

The Offenders have never had standing to pursue an injunction against Governor Lee. Article III grants federal courts power to render judgment on "'Cases' and 'Controversies'" only. *Safety Specialty*, 53 F.4th at 1020 (quoting U.S. Const. art. III, § 2, cl. 1). To establish a case or controversy "between" himself and an "adverse [defendant]," *Muskrat v. United States*, 219 U.S. 346, 361 (1911), a plaintiff must show that a court order could prevent *that* defendant from causing the plaintiff some injury, *see Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1031 (6th Cir. 2022). But the Offenders have never adequately "explained how the *Governor* caused [their] injur[ies]" or "what a federal court could order the Governor to do or refrain from doing to give [the Offenders] relief." *Id.* at 1032.

Nor could they. Despite his general duty to "take care that" Tennessee's "laws [are] faithfully executed," Tenn. Const. art. III, § 10, Governor Lee has no authority to enforce Tennessee's sex offender regulations. Instead, the State relies on independent local police and district attorneys to enforce the regulations by prosecuting their violation as a separate state offense. *See* Tenn. Code Ann. § 40-39-208(a); *Nabors*, 35

F.4th at 1032 (citing Tenn. Code Ann. § 8-7-103(1)). And even the regulatory duties imposed on Director Rausch do not trace to Governor Lee, because the governor lacks the ability to control the TBI Director through at-will removal. *See* Tenn. Code Ann. § 38-6-101(b)(4); *id.* § 8-47-101. Thus, "[w]hatever injury the [Offenders] may [have] suffer[ed] is not fairly traceable to . . . Governor Lee." *R.K.*, 53 F.4th at 999.

Because no constitutional violation is traceable to the Governor, "no remedy appli[ed] to [him] . . . [can] redress" such a violation. *Id.* at 1001. That lack of redressable injury makes Governor Lee "an improper defendant." *Shaw v. Patton*, 823 F.3d 556, 561 n.8 (10th Cir. 2016).

2. Tennessee's sovereign immunity protects Governor Lee from process.

In a separate but related vein, Governor Lee should have been shielded by Tennessee's sovereign immunity. When acting as Tennessee's "Supreme Executive," Tenn. Const. art. III, § 1, Governor Lee enjoys immunity from process in federal court, *see Wolfel*, 972 F.2d at 718–19. That immunity stems from a lack of jurisdiction over claims against States that have not consented to process. *See Cady v. Arenac Cnty.*, 574 F.3d 334, 344–45 (6th Cir. 2009). And it compels the dismissal of claims against any "arm" of state government, *Ernst v. Rising*, 427 F.3d 351, 358

(6th Cir. 2005) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977)), even when asserted for the first time on appeal, *Edelman v. Jordan*, 415 U.S. 651, 677–78 (1974). Governor Lee's invocation of immunity should thus excuse him from this lawsuit.

Although the Offenders may attempt to cite this Court's decision in *Ku v. Tennessee*, 322 F.3d 431 (6th Cir. 2003), the Court should make clear that *Ku* was never good law. Because the *Ku* panel "overlooked earlier Supreme Court authority" that was already controlling precedent, *Ku* does not bind subsequent panels. *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720 (6th Cir. 2016).

The panel in *Ku* affirmed a district court's rejection of Tennessee's attempt to assert its sovereign immunity after an unfavorable summary judgment ruling. 322 F.3d at 432. In the panel's opinion, "appearing without objection and defending" a case "on the merits" amounts to a "voluntary invocation of the federal court's jurisdiction," which constitutes a "waive[r]" of the state's immunity. *Id.* at 435 (citing *Lapides v. Bd. of Regents*, 535 U.S. 613 (2002)).

But the *Ku* panel ignored multiple precedents laying down the "stringent" test "for determining whether a State has waived its

immunity from federal-court jurisdiction." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985), *superseded by statute on other grounds as recognized in Lane v. Pena*, 518 U.S. 187, 198 (1996). Indeed, the Supreme Court "ha[s] even held that a State may . . . alter the conditions of its waiver and apply those changes to a pending suit." *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 676 (1999) (citing *Beers v. Arkansas*, 61 U.S. (20 How.) 527 (1857)). And as directly relevant to *Ku*, the Supreme Court has squarely determined that a State can raise and abandon its immunity at will — and at *any* stage of litigation — after being sued in federal court. *See Patsy v. Bd. of Regents*, 457 U.S. 496, 515 n.19 (1982); *Edelman*, 415 U.S. at 677–78; *see also Nair v. Oakland Cnty. Cmty. Mental Health Auth.*, 443 F.3d 469, 476–77 (6th Cir. 2006) (permitting a State to raise sovereign immunity as an alternative basis for affirmance if it would lose an appeal on the merits).

This Court thus need not, and should not, follow *Ku*. By the time *Ku* was decided, the Supreme Court had already squarely held that state sovereign immunity "need not be raised in the trial court." *Edelman*, 415 U.S. at 678. In fact, it can even be "rais[ed] . . . on remand" after being forfeited through an initial disposition *and* appeal. *Patsy*, 457 U.S. at

515 n.19. The Supreme Court's later determination that "a State waives [its] immunity when it *removes* a case . . . to federal court," *Lapides*, 535 U.S. at 618–19 (emphasis added), did not overturn this precedent, which will bind the Sixth Circuit "until it has been overruled by the [Supreme] Court itself," *Taylor v. Buchanan*, 4 F.4th 406, 408 (6th Cir. 2021).

This Court's sister circuits have recognized as much. Even after *Lapides v. Board of Regents*, 535 U.S. 613 (2002), announced the waiver-by-removal rule, the circuit courts have continued to stress that "[a] state's waiver of its sovereign immunity . . . must be 'unequivocally expressed.'" *Doe v. Moore*, 410 F.3d 1337, 1349 (11th Cir. 2005) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984)). They have thus drawn a distinction between "a voluntary invocation of or unequivocal submission to federal jurisdiction" and the more ambiguous decision to "defend[]" a suit "on the merits," *Union Pac. R. Co. v. La. Pub. Serv. Comm'n*, 662 F.3d 336, 341 (5th Cir. 2011).

In making that distinction, these courts have reaffirmed the point that a State defendant does "not voluntarily invoke[] federal jurisdiction by entering a general appearance and defending against [a] suit." *Union Elec. Co. v. Mo. Dep't of Conservation*, 366 F.3d 655, 660 (8th Cir. 2004).

On the contrary, the law still recognizes that sovereign immunity "may be raised at any time," *U.S. ex rel. Burlbaw v. Orenduff*, 548 F.3d 931, 942 (10th Cir. 2008), "even if the state defended the merits of the suit in the district court," *Lombardo v. Pa. Dep't of Pub. Welfare*, 540 F.3d 190, 198 n.7 (3d Cir. 2008) (quoting *Chittister v. Dep't of Cmty. & Econ. Dev.*, 226 F.3d 223, 227 (3d Cir. 2000)); *see also id.* at 197 n.6 (same).

The *Ku* panel would have reached that same conclusion had it considered *Edelman v. Jordan*, 415 U.S. 651, 677–78 (1974), and *Patsy v. Board of Regents*, 457 U.S. 496, 515 n.19 (1982), rather than focusing on *Lapides*'s narrow overruling of *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945). But because *Ku* "overlooked earlier Supreme Court authority" that was already controlling precedent, its outlier waiver determination does not bind subsequent panels. *Ne. Ohio*, 831 F.3d at 720. Thus, *Ku* notwithstanding, the Governor continues to enjoy immunity as an "arm" of the State of Tennessee.

To evade that immunity, the Offenders must squeeze their case into the "narrow exception" provided by *Ex parte Young*. *Whole Woman's II*, 142 S. Ct. at 532. Through that exception, a federal court may enjoin "state executive officials from enforcing state laws" in ways that run

"contrary to federal law." *Id.* But the Governor's lack of enforcement authority forecloses this route to jurisdiction. *See Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1047 (6th Cir. 2015) (citing *Children's Healthcare is a Legal Duty v. Deters*, 92 F.3d 1412, 1415–16 (6th Cir. 1996)).

Plainly stated, "*Young* does not apply" to a state officer that "has neither enforced nor threatened to enforce the allegedly unconstitutional state statute," *Children's Healthcare*, 92 F.3d at 1415, and that describes Governor Lee in this case. He does not require sex offenders to register with local police, *see* Tenn. Code Ann. § 40-39-203; he does not require them to disclose any personal information, *see id.*; he does not collect, compile, or publish that information, *see id.* §§ 203(m), 206(d), 214(a); and he does not keep sex offenders away from any schools, parks, or playgrounds, *see id.* § 211. Any "[g]eneral authority" he may have "to enforce the laws of the state is not sufficient to make" the Governor a "proper part[y] to [this] litigation." *Russell*, 784 F.3d at 1048 (quoting *1st Westco Corp. v. Sch. Dist. of Phila.*, 6 F.3d 108, 113 (3d Cir. 1993)). The district court should have dismissed him.

To allay further confusion in this area, this Court should explicitly address its decision in *Allied Artists Picture Corp. v. Rhodes*, 679 F.2d

656 (6th Cir. 1982). In that case, the Court rejected the Ohio Governor's claim to sovereign immunity by citing his "general authority to see that state laws are enforced." *Id.* at 665 n.5. The Court viewed that general authority as "sufficient" under *Ex parte Young* because the plaintiffs would be otherwise "unable to vindicate . . . their constitutional rights without first violating" the law. *Id.* District courts have since relied on *Allied Artists* to reject Governor Lee's immunity in suits challenging Tennessee's sex offender regulations. *See Doe v. Lee*, No. 3:21-cv-10, 2022 WL 452454, at *7 (E.D. Tenn. Feb. 14, 2022).

But that approach is not consistent with "directly applicable" reasoning from "intervening Supreme Court authority." *Ne. Ohio*, 831 F.3d at 720–21. In *Whole Woman's Health v. Jackson* (*Whole Woman's II*), 142 S. Ct. 522 (2021), the Court reemphasized that it "has never recognized an unqualified right to pre-enforcement review of constitutional claims in federal court," *id.* at 537–38. And consistent with that history, the Court rejected the plaintiffs' attempt to sue the Texas Attorney General as a means of enjoining "unnamed . . . persons who might seek to" invoke a state law. *Id.* at 535. In stark contrast to *Allied Artists*, the Supreme Court thought it "obvious" and "straightforward" that the Attorney

General's lack of "enforcement authority" under the law at issue put him beyond the reach of *Ex parte Young*, through which "a federal court . . . may [only] enjoin named defendants from taking specified unlawful actions." *Id.* at 534–35. Because the same must be said of Governor Lee in this and similar cases, *see supra* at 26–27, the reasoning of *Whole Woman's II* directly "undermines [the] holding" of *Allied Artists*. *Farhoud v. Brown*, No. 3:20-cv-2226, 2022 WL 326092, at *4 (D. Or. Feb. 3, 2022). This Court should say so.

Because the claims against Governor Lee have no viable path to jurisdiction, this Court should reverse their inclusion in the judgment.

B. The district court had only limited jurisdiction to keep Director Rausch from taking unconstitutional action.

The Court should likewise reverse the district court's overbroad adjudication of the claims against Director Rausch. Like Governor Lee, Director Rausch's official actions are covered by Tennessee's sovereign immunity. *See Wolfel*, 972 F.2d at 718–19. And like Governor Lee, Director Rausch can be enjoined "from enforcing state laws" in any way that runs "contrary to federal law." *Whole Woman's II*, 142 S. Ct. at 532. Unlike Governor Lee, Director Rausch *has* been charged with implementing certain state sex offender regulations. *See, e.g.*, Tenn. Code Ann. §§ 40-39-

206(d), 214(a). But the district court erred by using that limited role to justify review of the regulations writ large.

In a proper *Ex parte Young* action, the plaintiff challenges the defendant officer's exercise of power conferred to him under state law. *See Whole Woman's II*, 142 S. Ct. at 535–36 & n.3 (Opinion of Gorsuch, J.). The issue is not the constitutional validity of the law in the abstract, but whether the defendant is using *his* office to violate constitutional rights. *See Children's Healthcare*, 92 F.3d at 1415–16. The claims "must be 'based on a theory that the officer['s] . . . *statutory authority* . . . is unconstitutional'" and therefore cannot be employed consistent with federal law. *Id.* at 1415 (emphasis added) (quoting *Ohio v. Madeline Marie Nursing Homes*, 694 F.2d 449, 459 n.9 (6th Cir. 1982)).

But in this case, despite noting the "diffusion of responsibilities" under the regulations at issue, *Does #1–9*, 2023 WL 2335639, at *22, the district court assumed jurisdiction to review laws *not* enforced through Director Rausch's office, *see id.* at *3–7, *17. Contrary to the district court's belief, the TBI does not generally "require" the Offenders to comply with Tennessee's regulatory regime. Order, R.135 at 2721. Instead, most of the registry-related laws impose obligations and prohibitions on

sex offenders directly. *See, e.g.*, Tenn. Code Ann. § 40-39-211(b). Any breach of those terms is subject to prosecution as a separate state offense, *see id.* § 40-39-208(a), but the State relies on independent local police and district attorneys to prosecute such offenses, *see supra* Part I.A.1; *see also* Tenn. Const. art. VI, § 5 (requiring the local election of Tennessee district attorneys); *Nabors*, 35 F.4th at 1032 (analyzing the relationship between the district attorneys and the Tennessee Attorney General).

This should have limited to the scope of review the district court applied to this case. As head of the TBI, Director Rausch has the duty to "design[], print[] and distribute[]" the forms used to gather information for the sex offender registry. Tenn. Code Ann. § 40-39-205(a). He has the duty to "establish" and "maintain" the registry database, *id.* § 40-39-206(a), and "make . . . information available through the [registry] to" each "district attorney" and local "law enforcement agenc[y]," *id.* § 40-39-206(b). He has the duty to "maintain" an internet "connection to the [registry] . . . by which registering agencies" can "enter . . . accurate data required by" the registration laws. *Id.* § 40-39-204(a). And he must oversee the TBI's "central repository for all original [sex offender] registration forms." *Id.* § 40-39-204(d).

A challenge to those authorities could fit within *Ex parte Young*. *See Whole Woman's II*, 142 S. Ct. at 539 (majority opinion). The district court's broader review was error that this Court should reverse.

II. Tennessee's sex offender regulations do not violate the *Ex Post Facto* Clause.

Jurisdictional errors aside, the district court reached the wrong outcome on the merits. "[T]he application of the *Ex Post Facto* Clause is a legal question subject to de novo review." *Bredesen*, 507 F.3d at 1002. And in this case, the district court erred (1) by applying the *Ex Post Facto* Clause to a whole title of codified law, rather than specific legislation; (2) by ignoring the binding and persuasive precedent supporting Tennessee's regulations; and (3) by over-reading and extending this Court's decision in *Snyder*. Each of those errors warrants reversal.

A. The *Ex Post Facto* Clause applies to individual legislative acts, not whole chapters of code.

The district court erred by applying the *Ex Post Facto* Clause to the entire "current version" of Tennessee's codified sex offender regulations. *Does #1–9*, 2023 WL 2335639, at *3. The court referred to and thought of this Code chapter as "the Act," *id.* at *14, despite it comprising "more than two dozen" pieces of legislation, *id.* at *3. That approach was not consistent with the *Ex Post Facto* Clause jurisprudence.

Couched within the constitutional Article delineating "legislative Powers," U.S. Const. art. I, § 1, the *Ex Post Facto* Clause prohibits the States from "*pass*[*ing*] any . . . *ex post facto* Law," *id.* § 10, cl. 1 (emphasis added). As that language and context indicate, the "Clause is a limitation upon the powers of [State] Legislature[s]." *Dale*, 878 F.2d at 933 (quoting *Marks*, 430 U.S. at 191). It denies them the authority to pass a bill into law that "retroactively . . . increase[s] the punishment for" some "criminal act[]." *Collins v. Youngblood*, 497 U.S. 37, 43 (1990). Indeed, "the Latin phrase '*ex post facto*' literally" compares the date that some "'fact[ual]'" event happened to the date that some specific "law" was "passed." *Id.* at 41.

The Tennessee Code is not a bill that passed into law. In Tennessee, a "bill . . . passe[s]" into law by the traditional means of bicameralism and presentment. Tenn. Const. art. II, § 18. The Tennessee Code is merely a "compilation" of enacted laws, Tenn. Code Ann. § 1-1-105(a), which "constitute[s] prima facie evidence of [them]," *id.* § 111(b). Creating that compilation is a "mechanical process," *Ackerman v. Marable*, 95 S.W.2d 1286, 1288 (Tenn. Ct. App. 1934), done initially by administrative "commission," Tenn. Code Ann. § 1-1-101(a), and later approved by the

legislature. Although the Code is helpful to judges and lawyers, "[t]he Public Act[s]" are the "controlling" laws of the State. *State v. Hicks*, 835 S.W.2d 32, 37 (Tenn. Crim. App. 1992); *cf. Midland Power Co-op. v. FERC*, 774 F.3d 1, 4 (D.C. Cir. 2014) (applying the same principles to the U.S. Code).

The district court thus erred by treating Title 40, Chapter 39 of the Tennessee Code as a single legislative "Act." *Does #1–9*, 2023 WL 2335639, at *14. In truth, the Code's various provisions come from separate legislative acts, which have covered everything from the reporting of a sex offender's name and address, *see* 1994 Tenn. Pub. Acts ch. 976, to his ability to rent out his personal pool or hot tub, *see* 2022 Tenn. Pub. Acts ch. 1058.

Focusing on those separate acts is critical, because the *Ex Post Facto* Clause only prohibits legislation that "is *both* retroactive *and* penal" when enacted. *Vasquez v. Foxx*, 895 F.3d 515, 520 (7th Cir. 2018) *abrogated on other grounds by Koch v. Village of Hartland*, 43 F.4th 747, 756 & n.6 (7th Cir. 2022). To the extent an act addresses future conduct, or imposes civil regulations, it is "not *ex post facto* [and] may still be applied" constitutionally. *Weaver v. Graham*, 450 U.S. 24, 36 n.22 (1981).

The case law reflects this reality. Indeed, the typical *ex post facto* analysis addresses specific provisions of specific session laws that allegedly impose retroactive punishment. *See Weaver*, 450 U.S. at 31; *Lindsey v. Washington*, 301 U.S. 397, 398 (1937); *In re Medley*, 134 U.S. 160, 163 (1890); *Snyder*, 834 F.3d at 698; *Femedeer*, 227 F.3d at 1247. If the enactment operates prospectively, the *ex post facto* argument fails. *See United States v. Monaco*, 194 F.3d 381, 386 (2d Cir. 1999). If the enactment does not increase punishment, the *ex post facto* argument fails. *See Dorsey v. United States*, 567 U.S. 260, 275 (2012). If, by contrast, the *ex post facto* argument succeeds, the court must hold only the enactment unconstitutional, *see Weaver*, 450 U.S. at 36 n.22, and only to the extent that the provisions imposing retroactive punishment are not severable under state law, *see Lindenbaum v. Realgy, LLC*, 13 F.4th 524, 528 & n.2 (6th Cir. 2021).

The implications those rules have on this case cannot be overstated.

The question before the district court was *not* whether the relevant Code chapter as a whole imposed retroactive punishment. The question was whether particular "Public Acts" — creating particular obligations or restraints — imposed retroactive punishment. *Vollmer v. City of*

Memphis, 730 S.W.2d 619, 622 (Tenn. 1987); *see McGuire v. Marshall*, 50 F.4th 986, 1007–24 (11th Cir. 2022).

For the acts that did, the next question was whether the court could "give effect to a severability clause and . . . make an elision, so as not to invalidate [the] entire [en]act[ment]." *Moore v. Fowinkle*, 512 F.2d 629, 632 (6th Cir. 1975) (citing *Carr v. State ex rel. Armour*, 265 S.W.2d 556, 558 (Tenn. 1954)). Then, because "an unconstitutional act which amends a former valid act does not repeal or change the former act" under Tennessee law, *Vollmer*, 730 S.W.2d at 622, the next question was what provisions of "prior law [should] be applied" in light of any constitutional defects, *In re Swanson*, 2 S.W.3d 180, 189 (Tenn. 1999); *see State v. Crank*, 468 S.W.3d 15, 28–30 (Tenn. 2015).

The district court's misplaced focus on the Code as a whole caused it to skip that critical analysis. That was error.

B. Binding and persuasive precedent supports the Tennessee legislature's enactments.

Assuming the Offenders intended to challenge *all* the regulatory enactments that could be applied to them, binding precedent should have prevented them from prevailing. As mentioned, the *Ex Post Facto* Clause only prohibits legislation that is "*both* retroactive *and* [punitive]."

Vasquez, 895 F.3d at 520. This Court and the Supreme Court have already determined that the core features of Tennessee's regulatory regime are *neither* retroactive *nor* punitive. A body of sister-circuit precedent explains why recent amendments are not retroactive or punitive either.

Indeed, the Offenders have never argued that these laws are *intentionally* punitive — and for good reason. The Tennessee General Assembly has declared its intent to regulate sex offenders to "protect[] vulnerable populations from potential harm," *not* to impose "punishment." Tenn. Code Ann. § 40-39-201(b); *see Bredesen*, 507 F.3d at 1004.

Thus, the question is whether these laws are "so punitive . . . in purpose or effect as to negate" the State's regulatory "intention[s]." *Smith*, 538 U.S. at 92 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)). On that question, "'[o]nly the clearest proof' will transform what the legislature has denominated a civil regulatory measure into a criminal penalty." *Doe v. Miller*, 405 F.3d 700, 718 (8th Cir. 2005) (quoting *Smith*, 538 U.S. at 92). This places a "heavy burden" on the plaintiff, *McGuire*, 50 F.4th at 1005, to show either that the measure is inherently punitive or "that the law's 'nonpunitive purpose is a sham or mere

pretext,'" *Hope v. Commissioner*, 9 F.4th 513, 534 (7th Cir. 2021) (quoting *Smith*, 538 U.S. at 103)).

Determining whether that showing has been made requires an open-ended comparison between the provisions at issue and the core features of regulation and punishment. As "useful guideposts," *Smith*, 538 U.S. at 97 (quoting *Hudson v. United States*, 522 U.S. 93, 99(1997)), the Court should consider the nature of punishment as defined by "histor[ical] . . . traditions" and "aims." *Bredesen*, 507 F.3d at 1004 (quoting *Smith*, 538 U.S. at 97); *see also Doe v. Settle*, 24 F.4th 932, 947 (4th Cir. 2022) (identifying the "*Mendoza-Martinez* factors"). It should then balance that assessment against the law's "connection to a" regulatory objective, considering the "rational[ity]" and potential "excessive[ness]" of the means employed to meet "nonpunitive" ends. *Bredesen*, 507 F.3d at 1004 (quoting *Smith*, 538 U.S. at 97).

Tennessee's sex offender regulations pass muster under this test.

1. Tennessee's sex offender reporting rules are neither retroactive nor punitive.

The district court said little about Tennessee law's reporting requirements, and no wonder: this Court has already concluded that they are regulatory and not punitive.

In fact, this Court reviewed a "challenge[to] the registration . . . aspects of" Tennessee's sex offender regulations over two decades ago in *Cutshall v. Sundquist*, 193 F.3d 466, 469 (6th Cir. 1999). At that time, Tennessee law already required each convicted sex offender to provide his name, address, place of employment, and other basic personal information to registering authorities. *Id.* at 470 (discussing 1994 Tenn. Pub. Acts ch. 976). This Court determined that those disclosures were "not intended to punish, and . . . do not transform the law into punishment" by unintended effect. *Id.* at 477.

The issue returned to this Court eight years later in *Doe v. Bredesen*, 507 F.3d 998 (6th Cir. 2007), after major intervening amendments to the registration regime, *see id.* at 1000 (citing 2004 Tenn. Pub. Acts ch. 921). Again, the Court "analyze[d] the practical effect of the challenged" reporting rules, and again it concluded those rules were "not so punitive [in effect] as to negate the State's clearly expressed intent to create a civil regulatory scheme." *Id.* at 1007. The Court added "that [other] circuits have likewise consistently and repeatedly rejected *ex post facto* challenges to state statutes that . . . require sex offenders . . . to

comply with similar registration . . . or reporting requirements." *Id.* at 1007 (collecting cases).

That was, and continues to be, true. In fact, in the years since *Cutshall* and *Bredesen*, this Court and several others have determined that compelling a sex offender to register with the government is not even a retroactive measure; it is a prospective "regulat[ion of] 'dangers that arise postenactment.'" *Bremer v. Johnson*, 834 F.3d 925, 932 (8th Cir. 2016) (quoting *Vartelas v. Holder*, 566 U.S. 257, 271 n.7 (2012)); *see United States v. Elk Shoulder*, 738 F.3d 948, 958 (9th Cir. 2013) (citing *United States v. Felts*, 674 F.3d 599, 606 (6th Cir. 2012)). And numerous circuits — including this one — have held that "[reporting] provisions" similar or even identical to those used in Tennessee "do not amount to punishment." *Russell v. Gregoire*, 124 F.3d 1079, 1089 (9th Cir. 1997).

This includes explicit sanctioning of "regular[] . . . in person" reporting for life, *Shaw*, 823 F.3d at 564; *see id.* at 568–59, 576; in-person reporting "to update a registration," *United States v. Parks*, 698 F.3d 1, 6 (1st Cir. 2012); *see Hope*, 9 F.4th at 520; forced disclosure of "names, social security numbers, addresses, and vehicle descriptions," *United States v. W.B.H.*, 664 F.3d 848, 852 (11th Cir. 2011); collection of government

identification cards, *McGuire*, 50 F.4th at 995 n.14; forced disclosure of "internet usernames and email addresses," as well as "workplace addresses," *Hope*, 9 F.4th at 520; government collection of "fingerprint[s]," *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1057 (9th Cir. 2012); and even "DNA samples," *United States v. Coccia*, 598 F.3d 293, 297 (6th Cir. 2010). The law is well-settled in this area: gathering information is not a form of punishment.

Contrary to the district court's belief, *see Does #1–9*, 2023 WL 2335639, at *14, the *Snyder* decision does not call this into question. The plaintiffs in *Snyder* challenged two specific amendments to Michigan's sex offender laws. 834 F.4d at 698. The first amendment, "prohibit[ed] registrants . . . from living, working, or 'loitering' within 1,000 feet of a school." *Id.* (footnote omitted) (quoting Mich. Pub. Acts 121, 127 (2005)). The second amendment "divided [registrants] into three tiers . . . based . . . on the crime of conviction" and "require[d]" all registrants "to appear in person 'immediately' to update" changed registry information. *Id.* (quoting Mich. Pub. Acts 17, 18 (2011)). The Court concluded that "[t]he retroactive application of" these particular "amendments . . . [wa]s

unconstitutional." *Id.* at 706. But that ruling has little purchase here, for two important reasons.

First, the *Snyder* court did not wipe away prior precedents. In fact, *Snyder* draws an explicit distinction between legislation that required "in person" reporting and collection of "names, addresses, biometric data, and . . . photographs" and legislation that restricted access to schools and required immediate registry "update[s]." 834 F.3d at 697–98. The *Snyder* opinion also dutifully discusses and applies *Smith v. Doe*, 538 U.S. 84 (2003), which addressed core features of registration. In that discussion, *Snyder* specifically notes that *Smith* upheld Alaska's "reporting requirements" before "contrast[ing]" those requirements with the "restrictions on where [a sex offender] can live and work" imposed *on top* of reporting by the Michigan amendments at issue. 834 F.3d at 703.

It is true that *Snyder* at times refers to Michigan's "SORA" as a cumulative whole, rather than just the new amendments. *Id.* at 705. But reading those references in context, the validity of Michigan's reporting rules does no more than "lurk in the record." *Rinard v. Luoma*, 440 F.3d 361, 363 (6th Cir. 2006) (quoting *Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 559 (6th Cir. 2004)). It could not "hav[e] been so decided" in

Snyder "as to constitute precedent[]." *Id.* (quoting *Nemir*, 381 F.3d at 559). And as further confirmation, this Court has recently clarified that *Snyder* "merely prevented the retroactive application of SORA's *amendments* to [the] plaintiffs" in that case. *Does v. Whitmer*, --- F.4th ---, 2023 WL 3717055, at *6 (6th Cir. 2023) (emphasis added).

Second, to the extent *Snyder* does conflict with earlier rulings, it cannot be good law. One "panel of this Court cannot overrule the decision of another panel." *Darrah v. City of Oak Park*, 255 F.3d 301, 309 (6th Cir. 2001) (quoting *Salmi v. Sec'y of HHS*, 774 F.2d 685, 689 (6th Cir. 1985)). "In situations where two of [this Court's] published decisions are in tension, [the Court] follow[s] the earlier one." *Lakeside Surfaces, Inc. v. Cambria Co.*, 16 F.4th 209, 218 (6th Cir. 2021). In this case, that means *Cutshall* and *Bredesen* must govern over *Snyder* to the extent that the earlier cases address Tennessee's "lifetime registration" and "reporting" requirements. *Bredesen*, 507 F.3d at 1005.

The upshot is that the district court had no viable basis for holding Tennessee's disclosure requirements violate the *Ex Post Facto* Clause. This Court should reverse that determination.

2. Tennessee's publication of sex offender information is neither retroactive nor punitive.

A similar analysis applies to Tennessee's publication rules. The public's need for information was the main guiding impulse behind the "Megan's Law" campaign of the mid-1990s. *See supra* at 4–9. It should thus come as no surprise that this Court and numerous others have long held the mere publishing of information to be a valid, nonpunitive form of sex offender regulation.

Again, the Court has already addressed this specific issue in two prior appeals. In *Cutshall*, the Court emphasized that even the 1994 legislation allowed "the TBI [and] local law enforcement agenc[ies to] release relevant [registry] information deemed necessary to protect the public." 193 F.3d at 471 (emphasis omitted) (quoting Tenn. Code Ann. § 40-39-106(c) (1994)). And that release "c[ould] take place at any time law enforcement" deemed it "necessary to protect the public." *Id.* at 472. The Court nonetheless concluded that "[d]issemination of information is fundamentally different from traditional forms of punishment," *id.* at 475, and this "small burden[]" was not excessive compared to "the gravity of the state's interest in protecting the public from recidivist sex offenders," *id.* at 476. The Court held that line eight years later, after

Tennessee expanded its publication rules in response to federal mandates. *See Bredesen*, 507 F.3d at 1006; *see also id.* at 1011 (Keith, J., concurring in part and dissenting in part) (arguing only that GPS monitoring, not at issue here, was an excessive *addition* to publication).

Just as with the reporting rules, substantial sister-circuit precedent backs up this Court's decisions. Like reporting rules, publication rules do not even target the past offense; they address the *future* "danger that [members of] the public [will] not be aware of potentially dangerous sex offenders living, working, or attending school in [the] area." *Elk Shoulder*, 738 F.3d at 958. That is precisely why some of the earliest statutes required "members of the public likely to encounter [a] registrant" to be actively "notified." *Verniero*, 119 F.3d at 1102. And it is also why courts held these provisions did not "compel a conclusion of punishment." *Id.*; *see Pataki*, 120 F.3d at 1278–84; *Gregoire*, 124 F.3d at 1089–93.

When States started making registry information public and available on the internet, courts reaffirmed that such "notification scheme[s]" do not "constitute[] criminal punishment." *Femedeer*, 227 F.3d at 1253; *see Smith*, 538 U.S. at 99; *W.B.H.*, 664 F.3d at 855. There is no colorable

way to distinguish Tennessee's current publication rules from those lawfully employed by other States and the federal government.

On this point, too, *Snyder* says very little. Like the reporting rules, Michigan's publication rules were not at issue in *Snyder*. *See supra* at 41. That may explain why *Snyder* does not address *Cutshall*, *Bredesen*, or any of the prior rulings just discussed. Moreover, had the *Snyder* panel intended to make the Sixth Circuit "stand alone" on the publication issue, it would have said so directly, *Lakeside*, 16 F.4th at 219, and it could not have done so if that required "overrul[ing] the decision of another panel," *Darrah*, 255 F.3d at 309 (quoting *Salmi*, 774 F.2d at 689).

Again, the upshot is that the district court overread *Snyder* and lacked support to invalidate Tennessee's publication provisions.

3. Tennessee's child- and victim-access rules are neither retroactive nor punitive.

The district court focused most of its analysis on the provisions of Tennessee law limiting the Offenders' access to certain people and places. *See Does #1–9*, 2023 WL 2335639, at *15–17. But the TBI does not enforce those restrictions, so they cannot be at issue in this lawsuit. *See supra* Part I.B. In any event, they are not retroactive or punitive.

"[L]aws prohibiting persons convicted of a sex crime . . . from working in jobs involving frequent contact with minors . . . do not operate retroactively." *Vartelas*, 566 U.S. at 271 n.7. The reason is that such laws "address dangers that arise postenactment," *id.*, namely "children" being "in physical proximity to sex offenders," *Koch*, 43 F.4th at 759–60 (Kirsch, J., concurring in the judgment). Thus, the "critical question" is *not* "whether the law changes the legal consequences of acts completed before its effective date," *id.* at 758 (quoting *Weaver*, 450 U.S. at 31), but whether the law was enacted "to target 'past misconduct,'" *id.* (quoting *Vartelas*, 566 U.S. at 269); *accord Elk Shoulder*, 738 F.3d at 958. In the case of access restrictions, the evident goal is to "limit[]" a sex offender's "temptation[s] and reduc[e his] opportunit[ies] to commit a new crime." *Miller*, 405 F.3d at 720.

For similar reasons, these rules are not punitive. Although this Court had no occasion to address whether such restrictions were punitive in *Bredesen*, *see* 507 F.3d at 1002 n.4, several other circuits have — and they are of one mind. Prohibiting sex offenders from living near "school[s], playground[s], park[s], or child care center[s]," *Shaw*, 823 F.3d at 559, "does not amount to unconstitutional *ex post facto* punishment."

Miller, 405 F.3d at 705. Nor do similar restrictions on where an offender may "work[] or volunteer[]." *McGuire*, 50 F.4th at 1008. Each of these measures is "consistent with the . . . regulatory objective of protecting the health and safety of children," *Miller*, 405 F.3d at 720, and "reducing recidivism" among sex offenders, *Shaw*, 823 F.3d at 573; *see McGuire*, 50 F.4th at 1008–16. Indeed, if those aims can justify park bans, *see Doe v. City of Lafayette*, 377 F.3d 757, 766 n.8 (7th Cir. 2004), GPS monitoring, *see Belleau v. Wall*, 811 F.3d 929, 937 (7th Cir. 2016), and civil commitment, *see Miller*, 405 F.3d at 720–21, they can justify the less onerous restrictions imposed under Tennessee law.

The law is likewise clear that Tennessee need not "make individualized judgments" regarding recidivism risk "before imposing" these restrictions. *Hope*, 9 F.4th at 534. On the contrary, broad regulatory groupings based on the crime of conviction are "consistent with the [public safety] purpose and not 'excessive' within the meaning of the Supreme Court's decisions." *Miller*, 405 F.3d at 722; *see Shaw*, 823 F.3d at 576–77. In plain, authoritative terms, "[t]he *Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that

conviction of specified crimes should entail particular regulatory consequences." *Smith*, 538 U.S. at 103.

In nevertheless holding that Tennessee's access restrictions violate the Constitution, the district court took several wrong turns.

First, in comparing the restrictions to traditional forms of punishment, the court relied heavily on *Snyder*'s discussion of banishment. *See Does #1–9*, 2023 WL 2335639, at *15. But *Snyder*'s observation that Michigan's restrictions "resemble[d]" banishment — "in some respects" — is neither dispositive nor particularly enlightening. 834 F.3d at 701. *Snyder* expressed no disagreement with sister-circuit precedents stressing that similar restrictions do "not constitute expulsion from a community" like traditional banishment. *Shaw*, 823 F.3d at 567; *Miller*, 405 F.3d at 719. And in the years since *Snyder*, several other circuit courts have held that circumstantial restrictions on access to children do not "force [sex offenders] to leave their communities," *Vasquez*, 895 F.3d at 521; *see Hope*, 9 F.4th at 531, or "cut them off from interacting with other adults, or even with minors," *McGuire*, 50 F.4th at 1010. Offenders "remain able to enter exclusion zones . . . to see health care providers,

visit friends or family, eat meals, shop, or worship." *Id.* at 1009. The resemblance to banishment is slight.

Second, and more importantly, the district court erred by assessing the "rational[ity]" of these restrictions through an after-the-fact review of evidence produced in litigation. *Does #1–9*, 2023 WL 2335639, at *16. Although a court should consider whether a measure is "excessive[]" in relation to its aim, *Smith*, 538 U.S. at 105, the relevant question is still whether the legislature was meting out punishment when it passed the bill into law, *see supra* Part II.A. The statute must clear review so long as lawmakers could have "rationally conclude[d]" that the means served the regulatory ends, *Bredesen*, 507 F.3d at 1006, similar to the "rational basis test" applied in other constitutional contexts, *Settle*, 24 F.4th at 949. The fit between the regulatory ends and means thus need not be "the best choice possible to address the problem." *Smith*, 538 U.S. at 105.

Courts therefore need not, and should not, "pars[e] the latest academic studies on sex-offender recidivism" to "second-guess" a policy choice made fifteen years earlier. *Vasquez*, 895 F.3d at 525. Instead, they must determine only whether evidence at the time of enactment permitted a "conclu[sion] that sex offenders present an unusually high risk

of recidivism" and restrictions on their access to potential victims could "reduce that risk." *Bredesen*, 507 F.3d at 1006. To the extent *Snyder* authorized a judicial reassessment of legislation based on later-acquired evidence, it has always misstated the law. State "legislature[s are] free to disagree with" even contemporaneous evidence, *Settle*, 24 F.4th at 948, and "a recalibrated assessment of recidivism risk" cannot "refute the legitimate public safety interest in monitoring sex-offender presence in the community." *Masto*, 670 F.3d at 1057; *see W.B.H.*, 664 F.3d at 860.

Governor Lee and Director Rausch were thus under no obligation to produce new, backward-looking studies to show Tennessee's child-access restrictions have a "real-world" impact on public safety. *Does #1–9*, 2023 WL 2335639, at *8. But it is easy to see why the General Assembly reasoned these measures would work fifteen years ago when most of them passed into law. *See* 2008 Tenn. Pub. Acts ch. 1164, § 11.

At that time, the oft-cited article suggesting sex offender registries "*increase* the risk of recidivism" was still three years from being published. *Snyder*, 834 F.3d at 705 (citing J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161, 161 (2011)). And Department of Justice

data indicated that, in the three years *after* States started regulating sex offenders in earnest, they were slightly less likely than other "non-sex offenders" to be rearrested, but four times "more likely to be rearrested for a sex crime." Bureau of Justice Statistics, Recidivism of Sex Offenders Released from Prison in 1994 at 1, 14 (2003).

It is also important to note that a three-year window fails to account for the fact that "child abusers have been known to reoffend as late as [*twenty*] years following release into the community," and in fact "most reoffenses do not occur within the first several years after release." Nat'l Inst. of Just., Child Molestation: Research Issues at vi, 14 (1997) (emphasis added). In addition, recidivism rates do not reflect the full risk sex offenders pose to the public, due to the "serious underreporting of sex crimes, especially sex crimes against children." *Belleau*, 811 F.3d at 933; *see id.* at 933–34 (citing research). And regardless, "similar recidivism rates across different categories of crime would not establish that the nonpunitive aim of . . . protecting children . . . is a sham." *Vasquez*, 895 F.3d at 522; *see W.B.H.*, 664 F.3d at 860.

The district court's analysis thus rests on a foundation of errors running several layers deep. It should not survive this appeal.

III. The district court erred by granting improper relief.

Even assuming the district court reached the right outcome on the merits, this Court should still reverse the district court's grant of sweeping, unlawful relief. District courts may exercise discretion to issue injunctions and declaratory judgments. *See Schmitt v. LaRose*, 933 F.3d 628, 637 (6th Cir. 2019); *Travelers Indem. Co. v. Bowling Green Pro. Assocs., PLC*, 495 F.3d 266, 271 (6th Cir. 2007). But a court "abuses [that] discretion if its decision rests on a legal mistake." *Digital Media Sols., LLC v. S. Univ. of Ohio, LLC*, 59 F.4th 772, 777 (6th Cir. 2023). In this case, multiple legal errors undercut the court-ordered remedies.

A. The sweeping injunction did more than necessary or equitable to remedy the Offenders' injuries.

The district court had neither the power nor equitable basis to support its injunction. For reasons already explained, the injunction against Governor Lee lacks a jurisdictional foundation. *See supra* Part I.A.1. And although Director Rausch does have some registry-related duties, *see supra* at 30–31, the district court's injunction against him rests on multiple legal errors.

Assuming success on the merits and standing, a plaintiff must clear four additional hurdles to justify a permanent injunction. *See eBay Inc.*

v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). He must point to (1) "an irreparable injury"; (2) "inadequate" legal remedies; and (3) a "balance of hardships . . . warrant[ing]" equitable relief. *Id.* He must then establish (4) "that the public interest would not be disserved by [the] injunction." *Id.* And after making those showings, he still has no *right* to the "extraordinary remedy" of injunction, *Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312 (1982), but the court may issue one to the extent it deems appropriate, *see id.* at 313; *see Kallstrom*, 136 F.3d at 1069.

If and when a court does so, it is still bound by meaningful constraints. To begin, "[i]njunctive relief involving matters subject to state regulation may be no broader than necessary to remedy the constitutional violation." *Id.* (citing *Knop v. Johnson*, 977 F.2d 996, 1008 (6th Cir. 1992). And any order accompanying such relief "must: (A) state the reasons why [the injunction] issued; (B) state [its] terms specifically; and (C) describe in reasonable detail . . . the . . . acts restrained or required." *Union Home*, 31 F.4th at 362 (quoting Fed. R. Civ. P. 65(d)(1)).

This Court can "review[] the breadth of injunctive relief" even if it was "not rais[ed] . . . below." *Allied Enters., Inc. v. Advanced*

Programming Res., Inc., 146 F.3d 350, 360 (6th Cir. 1998). Here, the injunction against Director Rausch goes further than precedent permits.

First, the district court erred by not even attempting to determine the extent of relief "necessary" to protect the rights of these Offenders. *Kallstrom*, 136 F.3d at 1069. On the contrary, the court used much of its remedies analysis to argue that it did not *know* which statutory provisions violated constitutional rights. *See Does #1–9*, 2023 WL 2335639, at *20. This was in part because of the district court's improper focus on the whole Code, *see supra* at Part II.A, and in part because of its misreading of *Snyder*, which said nothing about remedies, *see* 834 F.3d at 706.

Had the district court done an appropriate enactment-by-enactment, provision-by-provision analysis, it might have determined what (if any) specific pieces of Tennessee legislation violated the *Ex Post Facto* Clause. *See McGuire*, 50 F.4th at 1007 n.25. The court would then have had to consider whether Tennessee rules of construction allowed for the reapplication of earlier statutes that the unconstitutional enactments attempted to repeal or modify. *See Lindenbaum*, 13 F.4th at 528–29 & n.2. It was error to forgo that analysis.

Second, the district court erred by failing to "restrain[]" Director Rausch's conduct in "specific[]" or "detail[ed]" terms. *Union Home*, 31 F.4th at 362 (quoting Fed. R. Civ. P. 65(d)(1)). The point of that requirement is to give "ordinary" people reasonable notice of "exactly what conduct is proscribed." *Scott*, 826 F.3d at 211 (quoting *U.S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 n.20 (5th Cir. 1975)). But here, the district court did not even distinguish Director Rausch's "enforce[ment]" actions from those of Governor Lee, much less identify how it would be "within [the Director's] power . . . to ensure that the [Offenders] are . . . not mistakenly treated as if they were included on" the sex offender registry. Order, R.135 at 2721–22. That was a critical oversight, especially since being "on" or "off" the registry does not change whether a person is a "violent sex offender" who must heed the substantive regulations. *See* Tenn. Code Ann. § 40-39-211 (2023). And if the idea was simply to prevent Director Rausch from distributing the Offenders' personal information, why didn't the district court just say that?

Third, the district court erred by enjoining the enforcement of statutory provisions that could *not* cause "irreparable injury." *eBay*, 547 U.S. at 391. Again, the district court's focus on the Code as a whole bred errors

in its analysis. The Offenders' claim to irreparable injury flows from "ongoing unconstitutional conduct." *Hearring v. Sliwowski*, 806 F.3d 864, 867 (6th Cir. 2015) (quoting *Taylor v. Mich. Dep't of Nat. Res.*, 502 F.3d 452, 458 (6th Cir. 2007)). But the enforcement of *constitutional* legislation cannot justify injunctive relief — and much of the legislation at issue could not possibly be unconstitutional. *See supra* Part II.B. Thus, while "[l]egislating" may be "for legislators," *Does #1–9*, 2023 WL 2335639, at *21, that does not excuse a federal court from determining which specific legislative acts are and are not constitutional, *see McGuire*, 50 F.4th at 1007 n.25. And if a court cannot determine or articulate the difference, it should not issue an injunction at all. *See eBay*, 547 U.S. at 391.

Fourth, the district court erred by ignoring the relevant equities. Even when a plaintiff has proved a deprivation of rights, an injunction should not issue as a matter of course. *Salazar v. Buono*, 559 U.S. 700, 714 (2010). Instead, the Court must consider the burdens and risks posed to other parties as well as "the public consequences" of upturning democratic legislation. *Romero–Barcelo*, 456 U.S. at 312; *see Wilson v. Williams*, 961 F.3d 829, 844–45 (6th Cir. 2020).

Through their elected representatives, the people of Tennessee have determined that violent sexual offenders "present an extreme threat to the public safety" and "pose a high risk of engaging in further offenses." Tenn. Code Ann. § 40-39-201(b)(1). They have determined that "protection of the public from these offenders is of paramount public interest," *id.*, and that the public needs information "to adequately protect . . . children from" them, *id.* § 40-39-201(b)(2). Yet the district court granted "full permanent injunctive relief" without even considering how less drastic measures might be *compelled* by principles of equity. *Does #1–9*, 2023 WL 2335639, at *21. That, too, was error.

B. The district court's declaratory judgment is an inequitable advisory opinion.

For related reasons, the district court's decision to grant declaratory relief was an abuse of equitable discretion. Federal courts have the power to issue declarations to resolve "case[s] of actual controversy." 28 U.S.C. § 2201(a). The district court here attempted to exercise that power to issue an advisory opinion coercing unnamed parties who never participated in this lawsuit. *See Does #1–9*, 2023 WL 2335639, at *22. On the law and the facts, this Court should reverse that error.

The Declaratory Judgment Act did not convert federal courts from "deciders of disputes" into "oracular authorities." *Doe v. Duling*, 782 F.2d 1202, 1205 (4th Cir. 1986). Instead, it provided them with "an alternative to the strong medicine of the injunction" when equity favors more tempered relief to resolve a genuine dispute. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 33 (2008) (quoting *Steffel v. Thompson*, 415 U.S. 452, 466 (1974)). The Offenders thus cannot secure an advisory opinion through the guise of declaratory relief. *See Safety Specialty*, 53 F.4th at 1020–21. Instead, like any other remedy, they must "*separately*" justify a declaration by showing it would redress some concrete harm caused to them by the Governor or TBI Director. *Nabors*, 35 F.4th at 1031 (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)).

The order they got does nothing of the sort.

In fact, the district court attempted to justify declaratory relief by pointing to the very circumstances that made it inappropriate. According to the court, the Offenders needed a declaration because "the effects and enforcement of" Tennessee's sex offender laws "are not limited to the actions of the defendants." *Does #1–9*, 2023 WL 2335639, at *22. That's backwards. The court could only rightfully grant declaratory relief to

redress some injury *these defendants* were causing. *See Calderon v. Ashmus*, 523 U.S. 740, 749 (1998) (discussing *Steffel*, 415 U.S. 452). It had no free-floating power to declare the Offenders' rights in relation to "absent nonparties" who have had no opportunity to defend themselves. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1254 (11th Cir. 2020).

Indeed, "no court may 'lawfully enjoin the world at large,' or purport to enjoin challenged 'laws themselves,'" *Whole Woman's II*, 142 S. Ct. at 535 (citation omitted) (quoting *Alemite*, 42 F.2d at 832, and *Whole Woman's Health v. Jackson* (*Whole Woman's I*), 141 S. Ct. 2494, 2495 (2021)), so no declaration against the world at large could be a "milder alternative" to injunction, *Perez v. Ledesma*, 401 U.S. 82, 111 (1971) (Brennan, J., concurring in part and dissenting in part). If the Offenders wanted protection against "the retroactive application" of sex offender regulations enforced by other parties, they should have sued those other parties and proved such action unlawful. Order, R.135 at 2722; *see Jacobson*, 974 F.3d at 1258.

Moreover, even if the district court had jurisdiction to issue a declaratory judgment, it still abused its discretion by granting such relief in this case. "[T]he Declaratory Judgment Act [is] 'an enabling [statute],

which confers . . . discretion on . . . courts rather than . . . right[s] upon . . . litigant[s]." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995) (quoting *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 241 (1952)). "[T]he propriety of declaratory relief" will thus "depend upon a circumspect sense of its fitness" in each specific case, "informed by the teachings and experience concerning the functions and extent of federal judicial power." *Id.* (quoting *Wycoff*, 344 U.S. at 243). Courts must therefore weigh a host of considerations before granting such relief. *See Northland Ins. v. Stewart Title Guar. Co.*, 327 F.3d 448, 453 (6th Cir. 2003) (citing *Scottsdale Ins. v. Roumph*, 211 F.3d 964, 968 (6th Cir. 2000)). And here, those considerations counseled against a declaratory judgment.

The Offenders' failure to sue appropriate defendants, such as local police and prosecutors, again pervades the analysis. The district court recognized that Governor Lee and Director Rausch "need[ed] no further declaration of rights," *Does #1–9*, 2023 WL 2335639, at *22, to "settle the [instant] controversy" over "the legal relations" between them and the Offenders, *Scottsdale*, 211 F.3d at 968. Yet it granted such relief anyway to address other (unadjudicated) "relations." *See Does #1–9,* 2023 WL 2335639, at *22. In so doing, it "encroach[ed] on state jurisdiction" by

"procedural[ly] fencing" subsequent state prosecutions brought by Tennessee's district attorneys. *Scottsdale*, 211 F.3d at 968. And since the only "alternative remedy" available was an injunction against Director Rausch, *id.*, the court should have considered declaratory relief as an alternative to that "strong medicine." *Winter*, 555 U.S. at 33 (quoting *Steffel*, 415 U.S. at 466).

Instead, the district court used its declaratory power to foreclose lawsuits that may or may not be brought by Tennessee's district attorneys. *Cf. Safety Specialty*, 53 F.4th at 1023 (holding a declaratory action unripe for similar reasons). That was an abuse of equitable discretion, which this Court should reverse.

* * *

The federal courts are "not meant to revise laws because they are clumsy, unwise, or[] even . . . unfair." *Settle*, 24 F.4th at 953. And federal judges lack the power, resources, and competence to set public policy. *See Patsy*, 457 U.S. at 513. What they do have is jurisdiction to prevent state officers from violating federal rights, *Whole Woman's II*, 142 S. Ct. at 532, but only in the context of actual cases and controversies arising between adverse litigants, *Nabors*, 35 F.4th at 1031. And when they exercise that

power, they must do so with the care and precision that its "extraordinary" nature deserves. *Romero–Barcelo*, 456 U.S. at 312. The district court did not observe those axioms. The result was numerous errors. This Court should reverse those errors.

CONCLUSION

The Court should direct the district court to dismiss Governor Lee and enter judgment in Director Rausch's favor.

Dated: June 16, 2023

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the Court's type-volume limitations because it contains 12,989 words, excluding portions omitted from the Court's required word count.

This brief complies with the Court's typeface requirements because it has been prepared in Microsoft Word using fourteen-point Century Schoolbook font.

/s/ Gabriel Krimm
Gabriel Krimm

CERTIFICATE OF SERVICE

On June 16, 2023, I filed an electronic copy of this brief with the Clerk of the Sixth Circuit using the CM/ECF system. That system sends a Notice of Docket Activity to all registered attorneys in this case. Under 6 Cir. R. 25(f)(1)(A), "[t]his constitutes service on them and no other service is necessary."

/s/ Gabriel Krimm
Gabriel Krimm

DESIGNATION OF RELEVANT DOCUMENTS

The following record documents are relevant to this appeal:

Document	R.	Pages
Doe #1 Complaint,	1	1–20
Doe #2 Complaint, *No. 3:21-cv-593 (M.D. Tenn.)*	1	1–20
Doe #3 Complaint,[5] *No. 3:21-cv-594 (M.D. Tenn.)*	1	1–19
Doe #4 Complaint, *No. 3:21-cv-595 (M.D. Tenn.)*	1	1–18
Doe #5 Complaint, *No. 3:21-cv-596 (M.D. Tenn.)*	1	1–20
Doe #6 Complaint, *No. 3:21-cv-597 (M.D. Tenn.)*	1	1–20
Doe #7 Complaint, *No. 3:21-cv-598 (M.D. Tenn.)*	1	1–20
Doe #8 Complaint, *No. 3:21-cv-624 (M.D. Tenn.)*	1	1–21
Doe #9 Complaint, *No. 3:21-cv-671 (M.D. Tenn.)*	1	1–19
Order Consolidating *Does #1–9*	40	406
Answer to Doe #1 Complaint	67	592–603
Answer to Doe #2 Complaint	68	604–15
Answer to Doe #3 Complaint	69	616–27
Answer to Doe #4 Complaint	70	628–38
Answer to Doe #5 Complaint	71	639–50
Answer to Doe #6 Complaint	72	651–62
Answer to Doe #7 Complaint	73	663–74
Answer to Doe #8 Complaint	74	675–86
Answer to Doe #9 Compliant	97	782–93
Lee & Rausch Mot. Summary Judgment & Exs.	115	913–1715

[5] Doe #3 is deceased. This entry has been provided for completeness.

Lee & Rausch Opening Summary Judgment Br.	116	1716–42
Lee & Rausch Statement of Material Facts	117	1743–52
Does Mot. Summary Judgment	121	2559–63
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Lee & Rausch Summary Judgment Reply Brief	129	2661–67
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Opinion Granting Does Summary Judgment	134	2680–720
Order of Injunctive and Declaratory Relief	135	2721–22
Final Judgment	136	2723
Notice of Appeal	138	2727–29

ADDENDUM

For the Court's convenience, this addendum includes:

- A copy of 1994 Tenn. Pub. Acts ch. 976
- A copy of the 1994 supplement to the 1990 Tennessee Code, reflecting the addition of Tenn. Code Ann. § 40-39-101 *et seq*.
- A copy of Tenn. Code Ann. § 40-39-101 *et seq*. from the official 1997 publication of the Tennessee Code
- A copy of the 1999 supplement to the 1997 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.
- A copy of Tenn. Code Ann. § 40-39-101 *et seq*. from the official 2003 publication of the Tennessee Code
- A copy of the 2004 supplement to the 2003 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.
- A copy of Tenn. Code Ann. § 40-39-101 *et seq*. from the official 2006 publication of the Tennessee Code
- A copy of the 2007 supplement to the 2006 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.; and
- A copy of the 2008 supplement to the 2006 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.

1994 Tenn. Pub. Acts ch. 976

APPROVED this 16 day of May 1994

NED McWHERTER, GOVERNOR

CHAPTER NO. 976

HOUSE BILL NO. 2388

By Representatives Brenda Turner, Peroulas Draper, Purcell, Chumney, Mike Williams, Venable, DeBerry, Hargrove, Kisber, Phillips, Windle, Herron, Ritchie, Kent, Hassell, Tindell, Halteman Harwell, Haley, Arriola, Boyer, Walley, Bell, Lewis, Phelan, Givens, Rigsby, Rinks, West, Ridgeway, Cross, McDaniel, Johnson, Micheal Williams and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 1868

By Senators Crowe, Gilbert, Wright, Springer, Wallace

AN ACT relative to certain criminal offenders and to amend Tennessee Code Annotated, Titles 37, 39, and 71.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, is amended by adding Sections 2 through 9 of this act as a new, appropriately designated chapter.

SECTION 2. This act shall be known and may be cited as the "Sexual Offender Registration and Monitoring Act."

SECTION 3. As used in this act,

(1) "Local law enforcement agency" means:

(A) within territory of a municipality, the municipal police force;

(B) within territory of a county having a metropolitan form of government, the metropolitan police force; and

(C) within unincorporated territory of a county, the sheriff's office.

(2) "Sexual offender" means a person who is, or has been, convicted in this state of committing a sexual offense or who is, or has been, convicted in another state of committing an act which would have constituted a sexual offense if it had been committed in this state; provided:

(A) conviction occurs on or after January 1, 1995; or

(B) if conviction occurred prior to January 1, 1995, the person

(i) remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(ii) is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) is discharged from incarceration without supervision on or after January 1, 1995.

(3) "Sexual offense" means:

(A) the commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) aggravated rape, under §39-13-502;

(ii) rape, under §39-13-503;

(iii) aggravated sexual battery, under §39-13-504;

(iv) sexual battery, under §39-13-505;

(v) statutory rape, under §39-13-506;

(vi) aggravated prostitution, under §39-13-516;

(vii) sexual exploitation of a minor, under §39-17-1003;

(viii) aggravated sexual exploitation of a minor, under §39-17-1004;

(ix) especially aggravated sexual exploitation of a minor, under §39-17-1005;

(x) incest, under §39-15-302; or

(xi) attempt, under §39-12-101, solicitation, under §39-12-102, or conspiracy, under §39-12-103, to commit any of the offenses enumerated within this subdivision; or

(B) the commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) aggravated rape, under §39-2-603;

(ii) rape, under §39-2-604;

(iii) aggravated sexual battery, under §39-2-608;

(iv) sexual battery, under §39-2-607;

(v) statutory rape, under §39-2-605;

(vi) assault with intent to commit rape or attempt to commit rape or sexual battery under §39-2-608;

(vii) incest, under §39-4-306;

(viii) use of minor for obscene purposes, under §39-6-1137;

(ix) promotion of performance including sexual conduct by minor, under §39-6-1138; or

(x) criminal sexual conduct in the first degree, under Section 39-3703;

(xi) criminal sexual conduct in the second degree, under Section 39-3704;

(xii) criminal sexual conduct in the third degree, under Section 39-3705;

(xiii) solicitation, under §39-1-401 or §39-118(b); attempt, under §39-1-501, §39-605, or §39-606; or conspiracy, under §39-1-601 or §39-1104; to commit any of the offenses enumerated within this subsection.

(4) "TBI" means the Tennessee Bureau of Investigation.

SECTION 4. Within ten (10) days following release on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which he or she temporarily resides or is domiciled for such length of time; each sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) complete name as well as any alias;

(2) date and place of birth;

(3) social security number;

(4) state of issuance and identification number of any valid driver license;

(5) for a sexual offender on supervised release - the name, address, and telephone number of the registrant's parole officer, probation officer, or other person responsible for the registrant's supervision;

(6) sexual offense or offenses of which the registrant has been convicted;

(7) current place and length of employment;

(8) current address and length of residence at such address; and

(9) such other registration and/or monitoring information as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. At least once every ninety (90) days following receipt of the initial registration/monitoring form pursuant to Section 4, the TBI shall mail a nonforwardable, verification/monitoring form to the registrant's last reported address. The form shall require verification of the continued accuracy of the most recent registration/monitoring form submitted by the sexual offender. Within ten (10) days following receipt of the verification/monitoring form, the registrant shall complete the form and shall cause such form to be delivered to TBI headquarters in Nashville.

SECTION 6.

(a) Sexual offender registration/monitoring forms and verification/monitoring forms shall be designed, printed, and distributed by and at the expense of the TBI. Sexual offender registration/monitoring forms shall be available from local law enforcement agencies; the TBI; the Tennessee Department of Correction; the Tennessee Department of Safety; and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to incarceration, shall promptly obtain the offender's signed statement acknowledging that the named officer or employee:

(1) has fully explained, and the offender understands, the registration and verification requirements and sanctions of this act; and

(2) has provided the offender with a blank TBI sexual offender registration/monitoring form.

Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require the officer or employee to report the offender's residential address. The officer or employee shall promptly cause the signed and completed acknowledgment form to be delivered to TBI headquarters in Nashville.

(c) At least ninety (90) days prior to the release of a sexual offender from incarceration with or without supervision, the warden of the correctional facility or jail shall obtain the offender's signed statement acknowledging that the named warden or his agent has fully explained, and the offender understands, the registration and verification requirements and sanctions of this act. Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The warden shall promptly cause the signed and completed acknowledgment form to be delivered to TBI headquarters in Nashville.

(d) Through press releases, public service announcements, and through other appropriate public information activities, the TBI shall strive to ensure that all sexual offenders, including those who move into this state, are informed and periodically reminded of the registration and verification requirements and sanctions of this act.

SECTION 7.

(a) Using information received or collected pursuant to this act, the TBI shall establish, maintain, and update a centralized record system of sexual offender registration and verification information. The TBI shall promptly report current sexual offender registration and verification information:

(1) to the local law enforcement agency for the offender's place of residence;

(2) to the local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;

(3) to the local law enforcement agency for the offender's place of employment;

(4) to the local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;

(5) when applicable, to the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release; and

(6) to the identification division of the Federal Bureau of Investigation.

(b) Upon request of the TBI, a local law enforcement agency, probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release, shall assist in the investigation and apprehension of a sexual offender suspected of violating the provisions of this act.

(c) Except as otherwise provided in subsections (a) and (b), information reported on sexual offender registration/monitoring forms, verification/monitoring forms, and acknowledgment forms shall be confidential; provided, however, the TBI or a local law enforcement agency may release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this act.

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI; officers and employees of local law enforcement agencies; probation officers; parole officers; and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community; shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this act.

SECTION 8.

(a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, a person required to submit sexual offender registration/monitoring forms and verification/monitoring forms may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit such forms. The district attorney of the county shall be named and served as the respondent in the petition.

(b) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider:

(1) the nature of the offense that required registration;

(2) the age and number of victims;

(3) the degree of violence involved in the offense;

(4) other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required registration;

(5) the period of time during which the petitioner has not reoffended; and

(6) any other relevant factors.

(c) IF, AND ONLY IF, the court finds that the petitioner:

(1) has complied with the provisions of this act,

(2) is rehabilitated, and

(3) does not pose a threat to the safety of the public,

THEN the court shall enter an order relieving the petitioner of the continuing duty to submit registration/monitoring forms and verification/monitoring forms. Upon receiving a certified copy of such

order of the court, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the petitioner and shall so notify the local law enforcement agency for the petitioner's place of residence and the local law enforcement agency for the petitioner's place of employment.

SECTION 9. Knowing falsification of a sexual offender registration/monitoring form or verification/monitoring form shall constitute a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days and shall constitute a Class E felony for the second or subsequent offense. Additionally, if the person is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute sufficient grounds for, and may result in, revocation of probation, parole, or other alternative to incarceration. Knowing failure to timely disclose required information or to timely deliver required registration/monitoring or verification/monitoring forms to the TBI shall be deemed to be falsification to the same extent as actually providing false information.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect on January 1, 1995, the public welfare requiring it.

PASSED: APRIL 21, 1994

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 10 day of May 1994

NED McWHERTER, GOVERNOR

1994 supplement to the
1990 Tennessee Code,
reflecting the addition of
Tenn. Code Ann. § 40-39-101 *et seq*.

Tennessee Code Annotated

1994 Supplement

Updated through the 1994 Session of the General Assembly

Volume 7A

1990 Replacement

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission

LYLE REID, Chair
JAMES A. CLODFELTER, Executive Secretary
CHARLES W. BURSON
FRANK F. DROWOTA, III
RUSSELL B. ENNIX

Cumulative pamphlet. Place in pocket of bound volume.
Remove the 1993 pamphlet.

THE MICHIE COMPANY
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1994

CERTIFICATE OF TENNESSEE CODE COMMISSION

I, James A. Clodfelter, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994; and that the Code sections codifying other Public Acts of 1993 are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 29th day of July, 1994.

James A. Clodfelter
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; and that Chapters 1 and 543 of the 98th General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 29th day of July, 1994.

Riley C Darnell
Secretary of State

THE GREAT SEAL OF THE STATE OF TENNESSEE
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victim or victim representative to submit a victim impact statement or to cooperate in the preparation of a victim impact statement. [Acts 1993, ch. 438, § 8.]

Effective Dates. Acts 1993, ch. 438, § 10. January 1, 1994.

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING [EFFECTIVE JANUARY 1, 1995]

SECTION.
40-39-101. Short title [Effective January 1, 1995].
40-39-102. Definitions [Effective January 1, 1995].
40-39-103. Sexual offender registration — Monitoring forms — Contents [Effective January 1, 1995].
40-39-104. Verification — Monitoring forms [Effective January 1, 1995].
40-39-105. Creation and distribution of forms — Acknowledgment forms [Effective January 1, 1995].
40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability [Effective January 1, 1995].
40-39-107. Petition to remove duty to report — Hearings — Required findings [Effective January 1, 1995].
40-39-108. Violations — Penalties [Effective January 1, 1995].

40-39-101. Short title [Effective January 1, 1995]. — This chapter shall be known and may be cited as the "Sexual Offender Registration and Monitoring Act." [Acts 1994, ch. 976, § 2.]

Effective Dates. Acts 1994, ch. 976, § 11. January 1, 1995.

Comparative Legislation. Sexual offender registration and monitoring:

Ala. Code § 13A-11-200 et seq.
Ark. Code § 12-12-901 et seq.
Miss. Code Ann. § 45-31-1 et seq.
Va. Code § 19.2-298.1 et seq.

40-39-102. Definitions [Effective January 1, 1995]. — As used in this chapter, unless the context otherwise requires:

(1) "Local law enforcement agency" means:

(A) Within territory of a municipality, the municipal police force;

(B) Within territory of a county having a metropolitan form of government, the metropolitan police force; and

(C) Within unincorporated territory of a county, the sheriff's office;

(2) "Sexual offender" means a person who is, or has been, convicted in this state of committing a sexual offense or who is, or has been, convicted in another state of committing an act which would have constituted a sexual offense if it had been committed in this state; provided, that:

(A) Conviction occurs on or after January 1, 1995; or

(B) If conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(3) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Aggravated prostitution, under § 39-13-516;

(vii) Sexual exploitation of a minor, under § 39-17-1003;

(viii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(ix) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(x) Incest, under § 39-15-302; or

(xi) Attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (3)(A); or

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-2-603 [repealed];

(ii) Rape, under § 39-2-604 [repealed];

(iii) Aggravated sexual battery, under § 39-2-606 [repealed];

(iv) Sexual battery, under § 39-2-607 [repealed];

(v) Statutory rape, under § 39-2-605 [repealed];

(vi) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vii) Incest, under § 39-4-306 [repealed];

(viii) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(ix) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(x) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(xi) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(xii) Criminal sexual conduct in the third degree, under § 39-3705 [repealed]; or

(xiii) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], or conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within subdivision (3)(B); and

(4) "TBI" means the Tennessee bureau of investigation. [Acts 1994, ch. 976, § 3.]

Compiler's Notes. Many of the title 39 sections referred to in this section have been repealed. See the notes for the respective sections in title 39.

40-39-103. Sexual offender registration — Monitoring forms — Contents [Effective January 1, 1995]. — Within ten (10) days following release

on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which the sexual offender temporarily resides or is domiciled for such length of time; each sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) Complete name as well as any alias;

(2) Date and place of birth;

(3) Social security number;

(4) State of issuance and identification number of any valid driver license;

(5) For a sexual offender on supervised release, the name, address, and telephone number of the registrant's parole officer, probation officer, or other person responsible for the registrant's supervision;

(6) Sexual offense or offenses of which the registrant has been convicted;

(7) Current place and length of employment;

(8) Current address and length of residence at such address; and

(9) Such other registration and/or monitoring information as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 1994, ch. 976, § 4.]

Section to Section References. This section is referred to in § 40-39-104.

40-39-104. Verification — Monitoring forms [Effective January 1, 1995]. — At least once every ninety (90) days following receipt of the initial registration/monitoring form pursuant to § 40-39-103, the TBI shall mail a nonforwardable, verification/monitoring form to the registrant's last reported address. The form shall require verification of the continued accuracy of the most recent registration/monitoring form submitted by the sexual offender. Within ten (10) days following receipt of the verification/monitoring form, the registrant shall complete the form and shall cause such form to be delivered to TBI headquarters in Nashville. [Acts 1994, ch. 976, § 5.]

40-39-105. Creation and distribution of forms — Acknowledgment forms [Effective January 1, 1995]. — (a) Sexual offender registration/monitoring forms and verification/monitoring forms shall be designed, printed, and distributed by and at the expense of the TBI. Sexual offender registration/monitoring forms shall be available from local law enforcement agencies; the TBI; the Tennessee department of correction; the Tennessee department of safety; and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b)(1) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to

incarceration, shall promptly obtain the offender's signed statement acknowledging that the named officer or employee:

(A) Has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter; and

(B) Has provided the offender with a blank TBI sexual offender registration/monitoring form.

(2) Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require the officer or employee to report the offender's residential address. The officer or employee shall promptly cause the signed and completed acknowledgment form to be delivered to TBI headquarters in Nashville.

(c) At least ninety (90) days prior to the release of a sexual offender from incarceration with or without supervision, the warden of the correctional facility or jail shall obtain the offender's signed statement acknowledging that the named warden or the warden's agent has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The warden shall promptly cause the signed and completed acknowledgment form to be delivered to TBI headquarters in Nashville.

(d) Through press releases, public service announcements, and through other appropriate public information activities, the TBI shall strive to ensure that all sexual offenders, including those who move into this state, are informed and periodically reminded of the registration and verification requirements and sanctions of this chapter. [Acts 1994, ch. 976, § 6.]

40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability [Effective January 1, 1995]. — (a) Using information received or collected pursuant to this chapter, the TBI shall establish, maintain, and update a centralized record system of sexual offender registration and verification information. The TBI shall promptly report current sexual offender registration and verification information to:

(1) The local law enforcement agency for the offender's place of residence;

(2) The local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;

(3) The local law enforcement agency for the offender's place of employment;

(4) The local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;

(5) When applicable, the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release; and

(6) The identification division of the federal bureau of investigation.

(b) Upon request of the TBI, a local law enforcement agency, probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release, shall assist in the investigation and apprehension of a sexual offender suspected of violating the provisions of this chapter.

(c) Except as otherwise provided in subsections (a) and (b), information reported on sexual offender registration/monitoring forms, verification/monitoring forms, and acknowledgment forms shall be confidential; provided, that the TBI or a local law enforcement agency may release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this chapter.

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI; officers and employees of local law enforcement agencies; probation officers; parole officers; and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community; shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this chapter. [Acts 1994, ch. 976, § 7.]

40-39-107. Petition to remove duty to report — Hearings — Required findings [Effective January 1, 1995]. — (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, a person required to submit sexual offender registration/monitoring forms and verification/monitoring forms may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit such forms. The district attorney general of the county shall be named and shall serve as the respondent in the petition.

(b) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider:

(1) The nature of the offense that required registration;

(2) The age and number of victims;

(3) The degree of violence involved in the offense;

(4) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required registration;

(5) The period of time during which the petitioner has not reoffended; and

(6) Any other relevant factors.

(c) If, and only if, the court finds that the petitioner:

(1) Has complied with the provisions of this chapter;

(2) Is rehabilitated; and

(3) Does not pose a threat to the safety of the public,

then the court shall enter an order relieving the petitioner of the continuing duty to submit registration/monitoring forms and verification/monitoring forms. Upon receiving a certified copy of such order of the court, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the petitioner and shall so notify the local law enforcement agency for the petitioner's place of residence and the local law enforcement agency for the petitioner's place of employment. [Acts 1994, ch. 976, § 8.]

40-39-108. Violations — Penalties [Effective January 1, 1995]. — Knowing falsification of a sexual offender registration/monitoring form or verification/monitoring form shall constitute a Class A misdemeanor for the

first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days and shall constitute a Class E felony for the second or subsequent offense. Additionally, if the person is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute sufficient grounds for, and may result in, revocation of probation, parole, or other alternative to incarceration. Knowing failure to timely disclose required information or to timely deliver required registration/monitoring or verification/monitoring forms to the TBI shall be deemed to be falsification to the same extent as actually providing false information. [Acts 1994, ch. 976, § 9.]

Effective Dates. Acts 1994, ch. 976, § 11. January 1, 1995.

Cross-References. Penalty for Class E felony, Class A misdemeanor, § 40-35-111.

Tenn. Code Ann. § 40-39-101 *et seq*. (1997)

Tennessee Code Annotated

Volume 7A

1997 Replacement

Updated through the 1997 Session of the General Assembly

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission

E. Riley Anderson, Chair
James A. Clodfelter, Executive Secretary
John Knox Walkup
Susan S. Jones
Lyle Reid

MICHIE

Law Publishers
Charlottesville, Virginia
1997

CERTIFICATE OF TENNESSEE CODE COMMISSION

I, James A. Clodfelter, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Tennessee Code Annotated, Section 1-1-110, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this Replacement Volume 7A; that the text of each section of the statutes of Tennessee printed or appearing in this Replacement Volume has been compared with the original section appearing in the published copies of the Public Acts; and, with the exception of changes permitted by Tennessee Code Annotated, Section 1-1-108, and with the exception of changes made necessary due to repeal by implication, express repeal and amendments by implication, the Code sections appearing in this Replacement Volume as codification of the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996 are true and correct copies of such sections as codified by Chapter 6 of the Public Acts of 1955; Chapter 1 of the Public Acts of 1957, of the Public Acts of 1959, of the Public Acts of 1961, of the Public Acts of 1963, of the Public Acts of 1965, of the Public Acts of 1967, of the Public Acts of 1969; Chapter 354 of the Public Acts of 1970; Chapter 1 of the Public Acts of 1971; Chapter 441 of the Public Acts of 1972; Chapter 1 of the Public Acts of 1973; Chapter 414 of the Public Acts of 1974; Chapter 1 of the Public Acts of 1975; Chapter 382 of the Public Acts of 1976; Chapter 1 of the Public Acts of 1977; Chapter 496 of the Public Acts of 1978; Chapter 1 of the Public Acts of 1979; Chapter 444 of the Public Acts of 1980; Chapter 1 of the Public Acts of 1981; Chapter 543 of the Public Acts of 1982; Chapter 1 of the Public Acts of 1983; Chapter 483 of the Public Acts of 1984; Chapter 2 of the Public Acts of 1985; Chapter 523 of the Public Acts of 1986; Chapter 786 of the Public Acts of 1986; Chapter 4 of the Public Acts of 1987; Chapter 458 of the Public Acts of 1988; Chapter 5 of the Public Acts of 1989; Chapter 668 of the Public Acts of 1990; Chapter 28 of the Public Acts of 1991; Chapter 528 of the Public Acts of 1992; Chapter 1 of the Public Acts of 1993; Chapter 543 of the Public Acts of 1994; Chapter 1 of the Public Acts of 1995; Chapter 554 of the Public Acts of 1996; and Chapter 1 of the Public Acts of 1997.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 10th day of September, 1997.

James A. Clodfelter
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that true and correct copies of the following acts, Chapter 6 of the Public Acts of the 79th General Assembly; and Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; Chapters 1 and 441 of the 87th General Assembly; Chapters 1 and 414 of the 88th General Assembly; Chapters 1 and 382 of the 89th General Assembly; Chapters 1 and 496 of the 90th General Assembly; Chapters 1 and 444 of the 91st General Assembly; Chapters 1 and 543 of the 92nd General Assembly; Chapters 1 and 483 of the 93rd General Assembly; Chapters 2, 523, and 786 of the 94th General Assembly; Chapters 4 and 458 of the 95th General Assembly; Chapters 5 and 668 of the 96th General Assembly; Chapters 28 and 528 of the 97th General Assembly; Chapters 1 and 543 of the 98th General Assembly; Chapters 1 and 554 of the 99th General Assembly; and Chapter 1 of the 100th General Assembly of the State of Tennessee, the originals of which are on file in the Office of the Secretary of State, were transmitted to the Tennessee Code Commission for publication in this Replacement Volume 7A.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee, at Nashville, on the 10th day of September, 1997.

Riley C. Darnell
Secretary of State

40-38-208. Submission of statement or cooperation in preparation of statement not required. — This part shall not be construed to require a victim or victim representative to submit a victim impact statement or to cooperate in the preparation of a victim impact statement. [Acts 1993, ch. 438, § 8.]

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.
40-39-101. Short title — Legislative findings.
40-39-102. Definitions.
40-39-103. Sexual offender registration — Monitoring forms — Contents.
40-39-104. Verification — Monitoring forms.
40-39-105. Creation and distribution of forms — Acknowledgment forms.
40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability.
40-39-107. Petition to remove duty to report — Hearings — Required findings.
40-39-108. Violations — Penalties.
40-39-109. Records not to be expunged.
40-39-110. Expungement upon death of offender.

40-39-101. Short title — Legislative findings. — (a) This chapter shall be known and may be cited as the "Sexual Offender Registration and Monitoring Act."

(b) The general assembly finds and declares that:

(1) Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this chapter to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about sexual offenders under the circumstances specified in this section will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of sexual offenders and the public release of specified information about sexual offenders will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of sexual offenders and for the public release of specified information regarding sexual offenders. This policy of authorizing the release of necessary and relevant information about sexual offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive; and

(7) The general assembly also declares, however, that in making information available about certain sexual offenders to the public, it does not intend

that the information be used to inflict retribution or additional punishment on any such sexual offender. [Acts 1994, ch. 976, § 2; 1997, ch. 461, § 1; 1997, ch. 466, § 1.]

Section to Section References. This chapter is referred to in §§ 29-8-101, 38-6-116.

Law Reviews. Note, A Framework for Post-Sentence Sex Offender Legislation: Perspectives on Prevention, Registration, and the Public's "Right" to Know, 48 Vand. L. Rev. 219 (1995).

Comparative Legislation. Sexual offender registration and monitoring:

Ala. Code § 13A-11-200 et seq.
Ark. Code § 12-12-901 et seq.
Miss. Code Ann. § 45-31-1 et seq.
Va. Code § 19.2-298.1 et seq.

40-39-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police force;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police force; and

(C) Within the unincorporated territory of a county, the sheriff's office;

(2) "Sexual offender" means a person who is, or has been, convicted in this state of committing a sexual offense or who is, or has been, convicted in another state or another country, or who is or has been convicted in a federal or military court, of committing an act which would have constituted a sexual offense if it had been committed in this state; provided, that:

(A) Conviction, pretrial diversion, judicial diversion, or any other alternative to incarceration occurs on or after January 1, 1995; or

(B) If conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on pretrial diversion, judicial diversion, probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from pretrial diversion, judicial diversion, probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(3) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Aggravated prostitution, under § 39-13-516;

(vii) Sexual exploitation of a minor, under § 39-17-1003;

(viii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(ix) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(x) Incest, under § 39-15-302;

(xi) False imprisonment of a minor, under § 39-13-302, (except when committed by a parent of such minor);

(xii) Kidnapping of a minor, under § 39-13-303, (except when committed by a parent of such minor);

(xiii) Aggravated kidnapping of a minor, under § 39-13-304, (except when committed by a parent of such minor);

(xiv) Especially aggravated kidnapping of a minor, under § 39-13-305, (except when committed by a parent of such minor);

(xv) Rape of a child, under § 39-13-522;

(xvi) Attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (3)(A); or

(xvii) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision; or

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-2-603 [repealed];

(ii) Rape, under § 39-2-604 [repealed];

(iii) Aggravated sexual battery, under § 39-2-606 [repealed];

(iv) Sexual battery, under § 39-2-607 [repealed];

(v) Statutory rape, under § 39-2-605 [repealed];

(vi) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vii) Incest, under § 39-4-306 [repealed];

(viii) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(ix) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(x) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(xi) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(xii) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(xiii) Kidnapping of a minor, under § 39-2-303 (repealed), (except when committed by a parent of such minor);

(xiv) Aggravated kidnapping of a minor, under § 39-2-301 (repealed), (except when committed by a parent of such minor);

(xv) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], or conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within subdivision (3)(B); or

(xvi) Accessory before or after the fact or aider and abettor under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in subdivision (3)(B); and

(4) "TBI" means the Tennessee bureau of investigation. [Acts 1994, ch. 976, § 3; 1996, ch. 834, § 1; 1997, ch. 462, §§ 1, 2; 1997, ch. 466, § 1.]

Compiler's Notes. Many of the title 39 sections referred to in this section have been repealed. See the notes for the respective sections in title 39.

40-39-103. Sexual offender registration — Monitoring forms — Contents. — (a) Within ten (10) days following release on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which the sexual offender temporarily resides or is domiciled for such length of time; each sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville. A person who is placed on probation or parole in another state for an offense that would be a sexual offense in this state and who is residing in this state pursuant to the compact for out-of-state supervision codified in chapter 28, part 4 of this title, shall be subject to the same registration and monitoring requirements of this chapter as a person placed on probation or parole for a sexual offense in this state. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) Complete name as well as any alias or aliases;

(2) Date and place of birth;

(3) Social security number or numbers;

(4) State of issuance and identification number of any valid driver license or licenses;

(5) For a sexual offender on supervised release, the name, address, and telephone number of the registrant's parole officer, probation officer, or other person responsible for the registrant's supervision;

(6) Sexual offense or offenses of which the registrant has been convicted;

(7) Current place and length of employment;

(8) Current address and length of residence at such address;

(9) Race and gender; and

(10) Such other registration and/or monitoring information, including a current photograph, as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) In accordance with the provisions of this chapter, the TBI may require a registrant, or the registrant's supervising authority, to submit a current photograph of the registrant. [Acts 1994, ch. 976, § 4; 1997, ch. 461, § 3; 1997, ch. 466, § 1.]

Section to Section References. This section is referred to in § 40-39-104.

40-39-104. Verification — Monitoring forms. — At least once every ninety (90) days following receipt of the initial registration/monitoring form pursuant to § 40-39-103, the TBI shall, by certified mail return receipt requested, send a nonforwardable, verification/monitoring form to the registrant's last reported address. The form shall require verification of the continued accuracy of the most recent registration/monitoring form submitted

by the sexual offender. Within ten (10) days following receipt of the verification/monitoring form, the registrant shall complete the form and shall cause such form to be delivered to TBI headquarters in Nashville. [Acts 1994, ch. 976, § 5; 1996, ch. 834, §§ 2, 3; 1997, ch. 466, § 1.]

40-39-105. Creation and distribution of forms — Acknowledgment forms. — (a) Sexual offender registration/monitoring forms and verification/monitoring forms shall be designed, printed, and distributed by and at the expense of the TBI. Sexual offender registration/monitoring forms shall be available from local law enforcement agencies; the TBI; the Tennessee department of correction; the Tennessee department of safety; and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b)(1) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to incarceration, shall promptly:

(A) Obtain the offender's signed statement acknowledging that the named officer or employee:

(i) Has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter; and

(ii) Has provided the offender with a blank TBI sexual offender registration/monitoring form and assisted the offender to complete the form.

(B) Obtain a current photograph of the offender.

(2) Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require the officer or employee to report the offender's residential address. The officer or employee shall within three (3) days cause the signed and completed acknowledgment form, sexual offender registration/monitoring form and photograph of the offender to be delivered to TBI headquarters in Nashville.

(c) At least ninety (90) days prior to the release of a sexual offender from incarceration with or without supervision, the warden of the correctional facility or jail shall obtain the offender's signed statement acknowledging that the named warden or the warden's agent has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. If the offender is to be released without any type of supervision, the warden of the correctional facility or jail shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The warden shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The warden shall promptly cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville within three (3) days of the release of the offender.

(d) If the offender is placed on unsupervised probation, the court shall obtain the offender's signed statement acknowledging that the court has fully

explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. The court shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The court shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The court shall, within three (3) days, cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville.

(e) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all sexual offenders, including those who move into this state, are informed and periodically reminded of the registration and verification requirements and sanctions of this chapter. [Acts 1994, ch. 976, § 6; 1997, ch. 466, § 1.]

40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability. — (a) Using information received or collected pursuant to this chapter, the TBI shall establish, maintain, and update a centralized record system of sexual offender registration and verification information. The TBI shall promptly report current sexual offender registration and verification information to:

(1) The local law enforcement agency for the offender's place of residence;

(2) The local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;

(3) The local law enforcement agency for the offender's place of employment;

(4) The local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;

(5) When applicable, the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release; and

(6) The identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that such an offender has not complied with the provisions of this chapter, the TBI shall notify the district attorney general and the probation officer, parole officer, or other public officer or employee assigned responsibility for the sexual offender's supervised release. Notification for a particular violation shall be reported only in the two (2) quarters immediately following the violation.

(c) For all offenses committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on sexual offender registration/monitoring forms, verification/monitoring forms, and acknowledgment forms shall be confidential; provided, that the TBI or a local law enforcement agency shall release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this chapter.

(d) If the TBI or a local law enforcement agency deems it necessary to protect the public concering a specific sexual offender who is required to

register pursuant to this part, such bureau or agency may notify the public by any means including the following:

(1) Written notice;

(2) Electronic transmission of registration information; or

(3) Providing on-line access to registration information.

(e) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, officers and employees of local law enforcement agencies, the district attorneys general and their employees, officers and employees of the courts, probation officers, parole officers, and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this chapter.

(f) For all sexual offenses committed on or after July 1, 1997, the information concerning a registered sexual offender set out in subdivisions (f)(1)-(9) shall be considered public information. In addition to making such information available in the same manner as other public records, the bureau shall prepare and place the information on the State of Tennessee's internet home page on or before January 1, 1998. This information shall become a part of the Tennessee internet criminal information center when such center is created within the bureau. The bureau shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as sexual offenders as required by this chapter. The following information concerning a registered sexual offender is public:

(1) The offender's complete name as well as any aliases;

(2) The offender's date of birth;

(3) The sexual offense or offenses of which the offender has been convicted;

(4) The street address including the house number, county, city and ZIP code area in which the offender resides, or if the offender does not reside in a city, the county, rural route and ZIP Code area where the offender resides;

(5) The offender's race and gender;

(6) The date of the last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI sexual offender registry;

(8) The offender's driver's license number and issuing state; and

(9) The offender's parole/probation office.

(g) The Tennessee bureau of investigation has the authority to promulgate any necessary rules to implement and administer the provisions of this section. Such rules shall be promulgated in accordance with the provisions of the Uniform Procedures Administrative Act, compiled in title 4, chapter 5. [Acts 1994, ch. 976, § 7; 1996, ch. 834, § 4; 1997, ch. 461, § 2; 1997, ch. 466, § 1.]

Cited: State v. Burdin, 924 S.W.2d 82 (Tenn. 1996).

40-39-107. Petition to remove duty to report — Hearings — Required findings. — (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration

or no sooner than ten (10) years after discharge from incarceration without supervision, a person required to submit sexual offender/registration/monitoring forms and verification/monitoring forms may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit such forms. The district attorney general of the county shall be named and shall serve as the respondent in the petition.

(b) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider, if available:

(1) The nature of the offense that required registration;

(2) The age and number of victims;

(3) The degree of violence involved in the offense;

(4) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required registration;

(5) The period of time during which the petitioner has not reoffended; and

(6) Any other relevant factors.

(c) If, and only if, the court finds that the petitioner:

(1) Has complied with the provisions of this chapter;

(2) Is rehabilitated; and

(3) Does not pose a threat to the safety of the public, then the court shall enter an order relieving the petitioner of the continuing duty to submit registration/monitoring forms and verification/monitoring forms. Upon receiving a certified copy of such order of the court, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the petitioner and shall so notify the local law enforcement agency for the petitioner's place of residence and the local law enforcement agency for the petitioner's place of employment.

(d) The records of a person who successfully completes a diversion program pursuant to §§ 40-15-102 — 40-15-105, shall not be removed and destroyed from the sexual offender registry except pursuant to this section if the offense for which prosecution was suspended was a sexual offense as defined by § 40-39-102(3).

(e) The records of a person who is dismissed from probation and whose proceedings are discharged pursuant to § 40-35-313, shall not be expunged from the sexual offender registry except pursuant to this section if the offense for which deferral and probation was granted was a sexual offense as defined by § 40-39-102(3).

(f) No offender may file more than one (1) petition during any five-year period. [Acts 1994, ch. 976, § 8; 1997, ch. 466, § 1.]

40-39-108. Violations — Penalties. — (a) Knowing falsification of a sexual offender registration/monitoring form or verification/monitoring form constitutes a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. A violation under this chapter is a Class E felony if the offender has a prior conviction under this chapter. Additionally, if the person is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute sufficient grounds for, and may result in, revocation of proba-

tion, parole, or other alternative to incarceration. Knowing failure to timely disclose required information or photographs or to timely deliver required registration/monitoring or verification/monitoring forms to the TBI shall be deemed to be falsification to the same extent as actually providing false information.

(b) In a prosecution for a violation of this section, in lieu of live testimony the TBI records custodian may, by sworn affidavit, verify that according to such records a sexual offender is in violation of the registration or verification requirements of this chapter. [Acts 1994, ch. 976, § 9; 1996, ch. 834, § 5; 1997, ch. 466, § 1.]

Cross-References. Penalty for Class E felony, Class A misdemeanor, § 40-35-111.

Penalty for Class A misdemeanor, § 40-35-111.

40-39-109. Records not to be expunged. — No information pertaining to a sexual offender shall be removed or expunged from the TBI's centralized record system of sexual offender registration and verification information unless expungement or removal is ordered by a court of competent jurisdiction pursuant to § 40-39-107. Unless expungement is ordered by a court pursuant to § 40-39-107, such data shall not be removed or expunged from such TBI record system even though the sexual offender's judicial records are expunged following the successful completion of a diversion program pursuant to chapter 15 of this title or § 40-35-313. [Acts 1997, ch. 455, § 3.]

Compiler's Notes. Acts 1997, ch. 455, § 5 provides that that act applies to sexual offenders and information pertaining to such sexual offenders who are on diversion programs on June 13, 1997, as well as offenders placed on such programs after such date.

40-39-110. Expungement upon death of offender. — Upon receipt of notice of the death of a registered offender, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the deceased offender. [Acts 1997, ch. 466, § 1.]

1999 supplement to the
1997 Tennessee Code,
reflecting changes to
Tenn. Code Ann. § 40-39-101 *et seq*.

Tennessee Code Annotated

1999 Supplement

Updated through the 1999 Regular and Extraordinary Sessions of the General Assembly

Volume 7A

1997 Replacement

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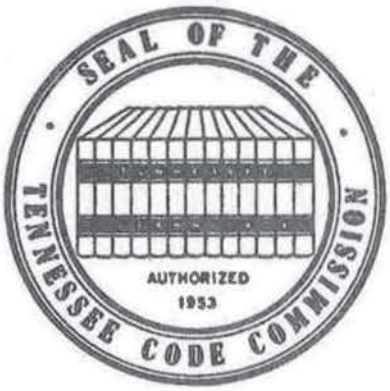

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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, James A. Clodfelter, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994, Chapter 1 of the Public Acts of 1995, Chapter 554 of the Public Acts of 1996, Chapter 1 of the Public Acts of 1997, Chapter 574 of the Public Acts of 1998, and Chapter 235 of the Public Acts of 1999, and that the Code sections codifying other Public Acts of 1998 are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 23rd day of September, 1999.

James A. Clodfelter
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; that Chapters 1 and 543 of the 98th General Assembly; that Chapters 1 and 554 of the 99th General Assembly; that Chapters 1 and 574 of the 100th General Assembly; and that Chapter 235 of the 101st General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 23rd day of September, 1999.

Riley C Darnell
Secretary of State

notification request has been made, give immediate and prompt notice of such release to the requesting victim, or family member of a victim by the most direct means available, including telephone, messenger or telegram. [Acts 1990, ch. 957, § 3; 1993, ch. 527, §§ 3, 9-11; 1996, ch. 709, § 2; 1997, ch. 509, § 3; 1998, ch. 1037, § 2; 1998, ch. 1049, § 52.]

Compiler's Notes. Acts 1998, ch. 1037, which rewrote (a)(4), provided in § 4 that the act shall apply to all compensable offenses committed on or after July 1, 1998.

Amendments. The 1998 amendment by ch. 1037 rewrote (a)(4).

The 1998 amendment by ch. 1049, in (a)(1)(G) and (a)(2), substituted "board of probation and parole" for "board of paroles."

Effective Dates. Acts 1998, ch. 1037, § 4. July 1, 1998.

Acts 1998, ch. 1049, § 68. May 18, 1998. However, the implementation of the act shall take effect July 1, 1999; provided, that provisions of the act may be implemented prior to July 1, 1999, upon the request of the Tennessee board of probation and parole through its chair with the approval of the commissioner of personnel and the commissioner of finance and administration, with review and comment by the select oversight committee on correction.

40-38-109. Notice to crime victims of eligibility for compensation. — The office of the district attorney general shall notify in writing each victim of a violent crime who may be eligible for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, of the methods by which the victim may obtain such compensation. The written notice shall be substantially in the form and content as prescribed by the state treasurer. In cases involving the death of such a victim, the notification shall be given to the closest relative to the deceased victim. For purposes of this section, "closest relative" has the same meaning as that given in § 34-11-101(3). [Acts 1998, ch. 785, § 30.]

Effective Dates. Acts 1998, ch. 785, § 34. April 22, 1998.

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.

40-39-103. Sexual offender registration — Monitoring forms — Contents.

40-39-102. Definitions.

Attorney General Opinions. Constitutionality of sexual assault victim testimony via one-way glass, OAG 98-051 (2/23/98).

Constitutionality of closed trial during testimony of sexual offense victim, OAG 98-051 (2/23/98).

40-39-103. Sexual offender registration — Monitoring forms — Contents. — (a) Within ten (10) days following release on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which the sexual offender temporarily resides or is domiciled for such length of time; each sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI

headquarters in Nashville. A person who is placed on probation or parole in another state for an offense that would be a sexual offense in this state and who is residing in this state pursuant to the compact for out-of-state supervision codified in chapter 28, part 4 of this title, shall be subject to the same registration and monitoring requirements of this chapter as a person placed on probation or parole for a sexual offense in this state. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) Complete name as well as any alias or aliases;

(2) Date and place of birth;

(3) Social security number or numbers;

(4) State of issuance and identification number of any valid driver license or licenses;

(5) For a sexual offender on supervised release, the name, address, and telephone number of the registrant's probation and parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offense or offenses of which the registrant has been convicted;

(7) Current place and length of employment;

(8) Current address and length of residence at such address;

(9) Race and gender; and

(10) Such other registration and/or monitoring information, including a current photograph, as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) In accordance with the provisions of this chapter, the TBI may require a registrant, or the registrant's supervising authority, to submit a current photograph of the registrant. [Acts 1994, ch. 976, § 4; 1997, ch. 461, § 3; 1997, ch. 466, § 1; 1998, ch. 1049, § 53.]

Amendments. The 1998 amendment, in (a)(5), substituted "probation and parole officer" for "parole officer, probation officer."

Effective Dates. Acts 1998, ch. 1049, § 68. May 18, 1998. However, the implementation of the act shall take effect July 1, 1999; provided, that provisions of the act may be implemented prior to July 1, 1999, upon the request of the Tennessee board of probation and parole through its chair with the approval of the commissioner of personnel and the commissioner of finance and administration, with review and comment by the select oversight committee on correction.

NOTES TO DECISIONS

1. Due Process.

The requirement for registration does not serve to trigger the protections of procedural due process. Cutshall v. Sundquist, 980 F. Supp. 928 (M.D. Tenn. 1997).

40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability.

NOTES TO DECISIONS

Analysis

1. Discretionary disclosure.
2. Privacy interest.

1. Discretionary Disclosure.

The discretionary disclosure provisions of this section violate the due process clause of the Constitution of the United States; accordingly,

notification must be preceded by a hearing with an opportunity to present witnesses, expert or otherwise, in which law enforcement officials bear the burden of proving that public safety necessitates release of the offender's registry information. Cutshall v. Sundquist, 980 F. Supp. 928 (M.D. Tenn. 1997).

2. Privacy Interest.

A convicted sex offender had a privacy interest, based upon the federal and state constitutions, in the disclosure of registry information under this section. Cutshall v. Sundquist, 980 F. Supp. 928 (M.D. Tenn. 1997).

Tenn. Code Ann. § 40-39-101 *et seq*. (2003)

Tennessee Code Annotated

Volume 7A

2003 Replacement

Updated through the 2003 Session of the General Assembly

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission

FRANK F. DROWOTA, III, Chair
ELLEN C. TEWES, Executive Secretary
JANICE M. HOLDER
SUSAN SHORT JONES
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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Ellen C. Tewes, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Tennessee Code Annotated, Section 1-1-110, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this Replacement Volume 7A; that the text of each section of the statutes of Tennessee printed or appearing in this Replacement Volume has been compared with the original section appearing in the published copies of the Public Acts; and, with the exception of changes permitted by Tennessee Code Annotated, Section 1-1-108, and with the exception of changes made necessary due to repeal by implication, express repeal and amendments by implication, the Code sections appearing in this Replacement Volume as codification of the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2003 are true and correct copies of such sections as codified by Chapter 6 of the Public Acts of 1955; Chapter 1 of the Public Acts of 1957, of the Public Acts of 1959, of the Public Acts of 1961, of the Public Acts of 1963, of the Public Acts of 1965, of the Public Acts of 1967, of the Public Acts of 1969; Chapter 354 of the Public Acts of 1970; Chapter 1 of the Public Acts of 1971; Chapter 441 of the Public Acts of 1972; Chapter 1 of the Public Acts of 1973; Chapter 414 of the Public Acts of 1974; Chapter 1 of the Public Acts of 1975; Chapter 382 of the Public Acts of 1976; Chapter 1 of the Public Acts of 1977; Chapter 496 of the Public Acts of 1978; Chapter 1 of the Public Acts of 1979; Chapter 444 of the Public Acts of 1980; Chapter 1 of the Public Acts of 1981; Chapter 543 of the Public Acts of 1982; Chapter 1 of the Public Acts of 1983; Chapter 483 of the Public Acts of 1984; Chapter 2 of the Public Acts of 1985; Chapter 523 of the Public Acts of 1986; Chapter 786 of the Public Acts of 1986; Chapter 4 of the Public Acts of 1987; Chapter 458 of the Public Acts of 1988; Chapter 5 of the Public Acts of 1989; Chapter 668 of the Public Acts of 1990; Chapter 28 of the Public Acts of 1991; Chapter 528 of the Public Acts of 1992; Chapter 1 of the Public Acts of 1993; Chapter 543 of the Public Acts of 1994; Chapter 1 of the Public Acts of 1995; Chapter 554 of the Public Acts of 1996; Chapter 1 of the Public Acts of 1997; Chapter 574 of the Public Acts of 1998; Chapter 1 of the Public Acts of 1999; Chapter 574 of the Public Acts of 2000; Chapter 52 of the Public Acts of 2001; Chapter 880 of the Public Acts of 2002; and Chapter 418 of the Public Acts of 2003.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 12th day of August, 2003.

Ellen C. Tewes

Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that true and correct copies of the following acts, Chapter 6 of the Public Acts of the 79th General Assembly; and Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; Chapters 1 and 441 of the 87th General Assembly; Chapters 1 and 414 of the 88th General Assembly; Chapters 1 and 382 of the 89th General Assembly; Chapters 1 and 496 of the 90th General Assembly; Chapters 1 and 444 of the 91st General Assembly; Chapters 1 and 543 of the 92nd General Assembly; Chapters 1 and 483 of the 93rd General Assembly; Chapters 2, 523, and 786 of the 94th General Assembly; Chapters 4 and 458 of the 95th General Assembly; Chapters 5 and 668 of the 96th General Assembly; Chapters 28 and 528 of the 97th General Assembly; Chapters 1 and 543 of the 98th General Assembly; Chapters 1 and 554 of the 99th General Assembly; Chapters 1 and 574 of the 100th General Assembly; Chapters 1 and 574 of the 101st General Assembly; Chapters 52 and 880 of the 102nd General Assembly; and Chapter 1 of the 103rd General Assembly of the State of Tennessee, the originals of which are on file in the Office of the Secretary of State, were transmitted to the Tennessee Code Commission for publication in this Replacement Volume 7A.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee, at Nashville, on the 12th day of August, 2003.

Riley C. Darnell
Secretary of State

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.
40-39-101. Short title — Legislative findings.
40-39-102. Chapter definitions.
40-39-103. Sexual offender registration — Monitoring forms — Contents.
40-39-104. Verification — Monitoring forms — Tolling of monitoring requirements — Incorrect address procedure.
40-39-105. Creation and distribution of forms — Acknowledgment forms.
40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability.
40-39-107. Petition to remove duty to report — Hearings — Required findings.
40-39-108. Violations — Penalties.
40-39-109. Records not to be expunged.
40-39-110. Expungement upon death of offender.
40-39-111. Residential restrictions.

40-39-101. Short title — Legislative findings. — (a) This chapter shall be known and may be cited as the "Sexual Offender Registration and Monitoring Act."

(b) The general assembly finds and declares that:

(1) Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this chapter to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about sexual offenders under the circumstances specified in this section will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of sexual offenders and the public release of specified information about sexual offenders will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of sexual offenders and for the public release of specified information regarding sexual offenders. This policy of authorizing the release of necessary and relevant information about sexual offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive; and

(7) The general assembly also declares, however, that in making information available about certain sexual offenders to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such sexual offender. [Acts 1994, ch. 976, § 2; 1997, ch. 461, § 1; 1997, ch. 466, § 1.]

Section to Section References. This chapter is referred to in §§ 29-8-101, 38-6-116.

Law Reviews. A Framework for Post-Sentence Sex Offender Legislation: Perspectives on Prevention, Registration, and the Public's "Right" to Know, 48 Vand. L. Rev. 219 (1995).

Comparative Legislation. Sexual offender registration and monitoring:
Ala. Code § 13A-11-200 et seq.
Ark. Code § 12-12-901 et seq.
Miss. Code Ann. § 45-33-21 et seq.
Va. Code § 19.2-298.1 et seq.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Legislative intent.

1. Constitutionality.

This chapter does not violate the constitutional prohibitions against double jeopardy, ex post facto laws, bills of attainder or cruel and unusual punishment, nor does it infringe upon a subject offender's rights to due process, equal protection, interstate travel or privacy. Cutshall v. Sundquist, 193 F.3d 466, 1999 Fed. App. 352 (6th Cir. 1999), cert. denied, 529 U.S. 1053, 120 S. Ct. 1554, 146 L. Ed. 2d 460 (2000).

2. Legislative Intent.

There is no indication that the Tennessee legislature intended this chapter to be punitive. Cutshall v. Sundquist, 193 F.3d 466, 1999 Fed. App. 352 (6th Cir. 1999), cert. denied, 529 U.S. 1053, 120 S. Ct. 1554, 146 L. Ed. 2d 460 (2000).

Collateral References. Sex offenses ⇦ 257A.433-469.

40-39-102. Chapter definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Employed or carries on a vocation" means any sort of full-time or part-time employment in the state, with or without compensation, for more than fourteen (14) days, or for an aggregate period exceeding thirty (30) days in a calendar year;

(2) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(3) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police force;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police force; and

(C) Within the unincorporated territory of a county, the sheriff's office;

(4) "Sexual offender" means a person who is, or has been, convicted in this state of committing a sexual offense or who is, or has been, convicted in another state or another country, or who is or has been convicted in a federal or military court, of committing an act which would have constituted a sexual offense if it had been committed in this state; provided, that:

(A) Conviction occurs on or after January 1, 1995; or

(B) If conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(5) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Aggravated prostitution, under § 39-13-516;

(vii) Sexual exploitation of a minor, under § 39-17-1003;

(viii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(ix) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(x) Incest, under § 39-15-302;

(xi) False imprisonment of a minor, under § 39-13-302, except when committed by a parent of such minor;

(xii) Kidnapping of a minor, under § 39-13-303, except when committed by a parent of such minor;

(xiii) Aggravated kidnapping of a minor, under § 39-13-304, except when committed by a parent of such minor;

(xiv) Especially aggravated kidnapping of a minor, under § 39-13-305, except when committed by a parent of such minor;

(xv) Rape of a child, under § 39-13-522;

(xvi) Sexual battery by an authority figure, under § 39-13-527;

(xvii) Solicitation of a minor, under § 39-13-528;

(xviii) Attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (5)(A); or

(xix) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (5)(A); or

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Aggravated rape, under § 39-2-603 [repealed];

(ii) Rape, under § 39-2-604 [repealed];

(iii) Aggravated sexual battery, under § 39-2-606 [repealed];

(iv) Sexual battery, under § 39-2-607 [repealed];

(v) Statutory rape, under § 39-2-605 [repealed];

(vi) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vii) Incest, under § 39-4-306 [repealed];

(viii) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(ix) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(x) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(xi) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(xii) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(xiii) Kidnapping of a minor, under § 39-2-303 [repealed], except when committed by a parent of such minor;

(xiv) Aggravated kidnapping of a minor, under § 39-2-301 [repealed], except when committed by a parent of such minor;

(xv) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], or conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within subdivision (3)(B); or

(xvi) Accessory before or after the fact or aider and abettor under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in subdivision (3)(B);

(6) "Sexually violent offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-13-502;

(B) Rape, under § 39-13-503; provided, if such person is convicted under § 39-13-503(a)(2) or (a)(4), such person may, after ten (10) years, petition to be relieved from further registration and monitoring requirements pursuant to the provisions of § 40-39-107;

(C) Aggravated sexual battery, under § 39-13-504;

(D) Rape of a child, under § 39-13-522; or

(E) Criminal attempt to commit any of the offenses listed above, under § 39-12-101.

Any conviction for an offense in a federal court, military court or court of another state or territory which under the laws of this state would be classified as a violation of any of the offenses listed in this definition shall be treated as a "sexually violent offense;" and

(7) "TBI" means the Tennessee bureau of investigation. [Acts 1994, ch. 976, § 3; 1996, ch. 834, § 1; 1997, ch. 462, §§ 1, 2; 1997, ch. 466, § 1; 2000, ch. 862, §§ 1-3; 2000, ch. 997, §§ 1, 4; 2002, ch. 469, § 2; 2002, ch. 749, § 1.]

Compiler's Notes. Many of the title 39 sections referred to in this section have been repealed. See the notes for the respective sections in title 39.

Section to Section References. This section is referred to in §§ 29-13-108, 40-28-409, 40-32-101, 40-35-313, 40-39-107, 40-39-102.

Attorney General Opinions. Constitutionality of sexual assault victim testimony via one-way glass, OAG 98-051 (2/23/98).

Constitutionality of closed trial during testimony of sexual offense victim, OAG 98-051 (2/23/98).

Cited: State v. Conrad, — S.W.3d —, 2003 Tenn. Crim. App. LEXIS 422 (Tenn. Crim. App. May 15, 2003).

Collateral References. Sex offenses ⇐ 257A.433-469.

40-39-103. Sexual offender registration — Monitoring forms — Contents. — (a) Within ten (10) days following release on probation, parole, or any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county in which the sexual offender temporarily resides or is domiciled or is employed, carries on a vocation or is a student for such length of time; each

sexual offender shall complete a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville. Within ten (10) days following employment or after becoming a student or volunteer at an institution of higher learning in the county or municipality where the sexual offender resides, the sexual offender shall complete or update a TBI sexual offender registration/monitoring form and shall cause such form to be delivered to TBI headquarters in Nashville in order to notify the law enforcement agency of such institution of higher education. A person who is placed on probation or parole in another state for an offense that would be a sexual offense in this state and who is residing in this state pursuant to the compact for out-of-state supervision codified in chapter 28, part 4 of this title, shall be subject to the same registration and monitoring requirements of this chapter as a person placed on probation or parole for a sexual offense in this state. Sexual offender registration/monitoring forms shall require disclosure of the following information:

(1) Complete name as well as any alias or aliases;

(2) Date and place of birth;

(3) Social security number or numbers;

(4) State of issuance and identification number of any valid driver license or licenses;

(5) For a sexual offender on supervised release, the name, address, and telephone number of the registrant's probation and parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offense or offenses of which the registrant has been convicted;

(7) Current place and length of employment;

(8) Current address and length of residence at such address;

(9) The name and address of each institution of higher education in the state at which the offender is employed, carries on a vocation or is a student;

(10) Race and gender; and

(11) Such other registration and/or monitoring information, including a current photograph, as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) In accordance with the provisions of this chapter, the TBI may require a registrant, or the registrant's supervising authority, to submit a current photograph of the registrant. [Acts 1994, ch. 976, § 4; 1997, ch. 461, § 3; 1997, ch. 466, § 1; 1998, ch. 1049, § 53; 2000, ch. 997, § 3; 2002, ch. 469, §§ 3, 11.]

Section to Section References. This section is referred to in §§ 10-7-504, 40-39-104.

Cited: State v. Conrad, — S.W.3d —, 2003 Tenn. Crim. App. LEXIS 422 (Tenn. Crim. App. May 15, 2003).

NOTES TO DECISIONS

1. Constitutionality.

T.C.A. § 40-39-103 does not violate the constitutional prohibitions against double jeopardy, ex post facto laws, bills of attainder or cruel and unusual punishment, nor does it infringe upon a subject offender's rights to due process, equal protection, interstate travel or privacy. Cutshall v. Sundquist, 193 F.3d 466, 1999 Fed. App. 352 (6th Cir. 1999), cert. denied, 529 U.S. 1053, 120 S. Ct. 1554, 146 L. Ed. 2d 460 (2000).

Collateral References. Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender. 78 ALR5th 489.
Sex offenses ⇐ 257A.433-469.

40-39-104. Verification — Monitoring forms — Tolling of monitoring requirements — Incorrect address procedure. — (a) At least once every ninety (90) days following receipt of the initial registration/monitoring form pursuant to § 40-39-103, the TBI shall, by certified mail return receipt requested, send a nonforwardable, verification/monitoring form to the registrant's last reported address. The form shall require verification of the continued accuracy of the most recent registration/monitoring form submitted by the sexual offender. Within ten (10) days following receipt of the verification/monitoring form, the registrant shall complete the form and shall cause such form to be delivered to TBI headquarters in Nashville.

(b) If a person who is required to register under this chapter is reincarcerated for another offense or as the result of having violated the terms of probation, parole or conditional discharge, the monitoring requirements are tolled during the subsequent incarceration. Likewise, if a person who is required to register under this chapter is deported from this country the monitoring requirements are tolled during the period of deportation.

(c) When a person who is required to register under this chapter furnishes an incorrect address to the Tennessee bureau of investigation, that address shall be removed from the registry and the person's address listed as "unknown." An address shall be deemed to be incorrect when at least two (2) consecutive monitoring forms sent to that address are returned to the Tennessee bureau of investigation as undeliverable to the person who furnished the address. [Acts 1994, ch. 976, § 5; 1996, ch. 834, §§ 2, 3; 1997, ch. 466, § 1; 2000, ch. 862, § 5.]

Collateral References. Sex offenses ⇐ 257A.433-469.

40-39-105. Creation and distribution of forms — Acknowledgment forms. — (a) Sexual offender registration/monitoring forms and verification/monitoring forms shall be designed, printed, and distributed by and at the expense of the TBI. Sexual offender registration/monitoring forms shall be available from local law enforcement agencies; law enforcement agencies of institutions of higher education; the TBI; the Tennessee department of correction; the Tennessee department of safety; and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b)(1) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to incarceration, shall promptly:

(A) Obtain the offender's signed statement acknowledging that the named officer or employee:

(i) Has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter; and

(ii) Has provided the offender with a blank TBI sexual offender registration/monitoring form and assisted the offender to complete the form.

(B) Obtain a current photograph of the offender.

(2) Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require the officer or employee to report the offender's residential address. The officer or employee shall within three (3) days cause the signed and completed acknowledgment form, sexual offender registration/monitoring form and photograph of the offender to be delivered to TBI headquarters in Nashville.

(c) At least ninety (90) days prior to the release of a sexual offender from incarceration with or without supervision, the warden of the correctional facility or jail shall obtain the offender's signed statement acknowledging that the named warden or the warden's agent has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. If the offender is to be released without any type of supervision, the warden of the correctional facility or jail shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The warden shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed, and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The warden shall promptly cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville within three (3) days of the release of the offender.

(d) If the offender is placed on unsupervised probation, the court shall obtain the offender's signed statement acknowledging that the court has fully explained, and the offender understands, the registration and verification requirements and sanctions of this chapter. The court shall provide the offender with a blank TBI sexual offender registration/monitoring form and assist the offender to complete the form. The court shall also obtain a current photograph of the offender. Forms for such statements of acknowledgment shall be designed, printed and distributed by, and at the expense of, the TBI and shall require disclosure of the offender's anticipated residential address. The court shall, within three (3) days, cause the signed and completed acknowledgment form, the sexual offender registration/monitoring form and the photograph of the offender to be delivered to TBI headquarters in Nashville.

(e) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all sexual offenders, including those who move into this state, are informed and periodically reminded of the registration and verification requirements and sanctions of this chapter. [Acts 1994, ch. 976, § 6; 1997, ch. 466, § 1; 2002, ch. 469, § 7.]

Collateral References. Sex offenses ⇐ 257A.433-469.

40-39-106. Centralized record system — Reporting — Apprehension of violators — Immunity from liability. — (a) Using information received or collected pursuant to this chapter, the TBI shall establish, maintain, and update a centralized record system of sexual offender registration and verification information. The TBI shall promptly report current sexual offender registration and verification information to:

(1) The local law enforcement agency for the offender's place of residence;

(2) The local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;

(3) The local law enforcement agency for the offender's place of employment;

(4) The local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;

(5) The law enforcement agency of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student, or if the institution of higher education has no law enforcement agency, the local law enforcement agency having jurisdiction for the campus;

(6) The law enforcement agency of any institution of higher education in the state at which the offender was employed, carried on a vocation or was a student if a change in enrollment or employment is indicated, or if the institution of higher education has no law enforcement agency, the local law enforcement agency having jurisdiction for the campus;

(7) When applicable, the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release; and

(8) The identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that such an offender has not complied with the provisions of this chapter, the TBI shall notify the district attorney general and the probation officer, parole officer, or other public officer or employee assigned responsibility for the sexual offender's supervised release. Notification for a particular violation shall be reported only in the two (2) quarters immediately following the violation.

(c) For all offenses committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on sexual offender registration/monitoring forms, verification/monitoring forms, and acknowledgment forms shall be confidential; provided, that the TBI, a local law enforcement agency or a law enforcement agency of any institution of higher education shall release relevant information deemed necessary to protect the public concerning a specific sexual offender who is required to register pursuant to this chapter.

(d) If the TBI, a local law enforcement agency or a law enforcement agency of any institution of higher education deems it necessary to protect the public concering a specific sexual offender who is required to register pursuant to this part, such bureau or agency may notify the public by any means including the following:

(1) Written notice;

(2) Electronic transmission of registration information; or

(3) Providing on-line access to registration information.

(e) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, officers and employees of local law enforcement agencies,

officers and employees of law enforcement agencies of institutions of higher education, the district attorneys general and their employees, officers and employees of the courts, probation officers, parole officers, and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this chapter.

(f) For all sexual offenses committed on or after July 1, 1997, the information concerning a registered sexual offender set out in subdivisions (f)(1)-(9) shall be considered public information. For all sexual offenses committed on or after October 27, 2002, the information concerning a registered sexual offender set out in subdivision (f)(10) shall be considered public information. In addition to making such information available in the same manner as other public records, the bureau shall prepare and place the information on the State of Tennessee's internet home page on or before January 1, 1998. This information shall become a part of the Tennessee internet criminal information center when such center is created within the bureau. The bureau shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as sexual offenders as required by this chapter. The following information concerning a registered sexual offender is public:

(1) The offender's complete name as well as any aliases;

(2) The offender's date of birth;

(3) The sexual offense or offenses of which the offender has been convicted;

(4) The street address including the house number, county, city and ZIP code area in which the offender resides, or if the offender does not reside in a city, the county, rural route and ZIP code area where the offender resides;

(5) The offender's race and gender;

(6) The date of the last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI sexual offender registry;

(8) The offender's driver's license number and issuing state;

(9) The offender's parole/probation office; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student.

(g) The Tennessee bureau of investigation has the authority to promulgate any necessary rules to implement and administer the provisions of this section. Such rules shall be promulgated in accordance with the provisions of the Uniform Procedures Administrative Act, compiled in title 4, chapter 5. [Acts 1994, ch. 976, § 7; 1996, ch. 834, § 4; 1997, ch. 461, § 2; 1997, ch. 466, § 1; 2002, ch. 469, §§ 4-6, 8-10.]

Section to Section References. This section is referred to in § 10-7-504.

Cited: State v. Burdin, 924 S.W.2d 82 (Tenn. 1996).

NOTES TO DECISIONS

1. Constitutionality.

T.C.A. § 40-39-106 does not violate the constitutional prohibitions against double jeopardy, ex post facto laws, bills of attainder or cruel and unusual punishment, nor does it infringe upon a subject offender's rights to due

process, equal protection, interstate travel or privacy. Cutshall v. Sundquist, 193 F.3d 466, 1999 Fed. App. 352 (6th Cir. 1999), cert. denied, 529 U.S. 1053, 120 S. Ct. 1554, 146 L. Ed. 2d 460 (2000).

Collateral References. Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender. 78 ALR5th 489.

Sex offenses ⇐ 257A.433-469.

40-39-107. Petition to remove duty to report — Hearings — Required findings. — (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, a person required to submit sexual offender/registration/monitoring forms and verification/monitoring forms may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit such forms. The district attorney general of the county shall be named and shall serve as the respondent in the petition.

(b) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider, if available:

(1) The nature of the offense that required registration;

(2) The age and number of victims;

(3) The degree of violence involved in the offense;

(4) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required registration;

(5) The period of time during which the petitioner has not reoffended; and

(6) Any other relevant factors.

(c) If, and only if, the court finds that the petitioner:

(1) Has complied with the provisions of this chapter;

(2) Is rehabilitated; and

(3) Does not pose a threat to the safety of the public, then the court shall enter an order relieving the petitioner of the continuing duty to submit registration/monitoring forms and verification/monitoring forms. Upon receiving a certified copy of such order of the court, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the petitioner and shall so notify the local law enforcement agency for the petitioner's place of residence and the local law enforcement agency for the petitioner's place of employment.

(d) No offender may file more than one (1) petition during any five-year period.

(e)(1) A person required to register under this part shall continue to comply with the registration and quarterly monitoring requirements for the life of that person if that person:

(A) Has one (1) or more prior convictions for a sexual offense as defined in § 40-39-102(5); or

(B) Has been convicted of a sexually violent offense as described in § 40-39-102(6).

(2) As used in subdivision (g)(1)(A), "prior conviction" means any conviction for a sexual offense as defined in § 40-39-102 occurring prior to the date of the offense for which the offender is currently required to register. [Acts 1994, ch. 976, § 8; 1997, ch. 466, § 1; 2000, ch. 862, § 4; 2000, ch. 997, § 2.]

Section to Section References. This section is referred to in §§ 40-39-102, 40-39-107.

Collateral References. Sex offenses ⇦ 257A.433-469.

40-39-108. Violations — Penalties. — (a) Knowing falsification of a sexual offender registration/monitoring form or verification/monitoring form constitutes a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for the Class A misdemeanor offense of knowing falsification of a sexual offender registration/monitoring or verification/monitoring form is mandatory. No person committing such offense shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety. A violation under this chapter is a Class E felony if the offender has a prior conviction under this chapter. Additionally, if the person is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute sufficient grounds for, and may result in, revocation of probation, parole, or other alternative to incarceration. Knowing failure to timely disclose required information or photographs or to timely deliver required registration/monitoring or verification/monitoring forms to the TBI shall be deemed to be falsification to the same extent as actually providing false information.

(b) In a prosecution for a violation of this section, in lieu of live testimony the TBI records custodian may, by sworn affidavit, verify that according to such records a sexual offender is in violation of the registration or verification requirements of this chapter. [Acts 1994, ch. 976, § 9; 1996, ch. 834, § 5; 1997, ch. 466, § 1; 2000, ch. 882, § 1.]

Cross-References. Penalty for Class E felony, § 40-35-111.

Penalty for Class A misdemeanor, § 40-35-111.

Collateral References. Sex offenses ⇦ 257A.433-469.

40-39-109. Records not to be expunged. — No information pertaining to a sexual offender shall be removed or expunged from the TBI's centralized record system of sexual offender registration and verification information unless expungement or removal is ordered by a court of competent jurisdiction pursuant to § 40-39-107. Unless expungement is ordered by a court pursuant to § 40-39-107, such data shall not be removed or expunged from such TBI record system even though the sexual offender's judicial records are expunged following the successful completion of a diversion program pursuant to chapter 15 of this title or § 40-35-313. [Acts 1997, ch. 455, § 3.]

Collateral References. Sex offenses ⇦ 257A.433-469.

40-39-110. Expungement upon death of offender. — Upon receipt of notice of the death of a registered offender, the TBI shall expunge from the centralized record system of sexual offender registration and verification information all data pertaining to the deceased offender. [Acts 1997, ch. 466, § 1.]

Collateral References. Sex offenses ⇦ 257A.433-469.

40-39-111. Residential restrictions. — (a) No sexual offender as defined in § 40-39-102(4), shall knowingly establish a residence or accept employment within one thousand feet (1,000′) of the property on which any public school, private or parochial school, licensed day care center, or any other child care facility is located.

(b) No sexual offender as defined in § 40-39-102(4), shall knowingly establish a residence or any other living accommodation within one thousand feet (1,000′) of the property on which the offender's former victims, or the victims' immediate family members, reside nor shall such offender knowingly come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law, or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim.

(c) No sexual offender as defined in § 40-39-102(4), shall knowingly establish a residence or any other living accommodation where a minor resides. Notwithstanding this subsection (c), such an offender may reside with a minor if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense committed by the sexual offender.

(d) Changes in the ownership or use of or person or entity that occupies property within one thousand feet (1,000′) of a sex offender's registered address which occur after a sexual offender establishes residency or accepts employment shall not form the basis for finding that a sexual offender is in violation of the residence restrictions of this section.

(e) A violation of this section is a Class A misdemeanor. [Acts 2003, ch. 95, § 1.]

Effective Dates. Acts 2003, ch. 95, § 2. July 1, 2003.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Collateral References. Sex offenses ⇦ 257A.433-469.

2004 supplement to the 2003 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.

Tennessee Code Annotated

2004 Supplement

Updated through the 2004 Regular Session of the General Assembly

Volume 7A

2003 Replacement

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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Ellen C. Tewes, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994, Chapter 1 of the Public Acts of 1995, Chapter 554 of the Public Acts of 1996, Chapter 1 of the Public Acts of 1997, Chapter 574 of the Public Acts of 1998, Chapter 1 of the Public Acts of 1999, Chapter 574 of the Public Acts of 2000, Chapter 52 of the Public Acts of 2001, Chapter 880 of the Public Acts of 2002, Chapter 418 of the Public Acts of 2003, and Chapter 963 of the Public Acts of 2004 and that the Code sections codifying other Public Acts of 2003 are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 17th day of August, 2004.

SEAL OF THE TENNESSEE CODE COMMISSION AUTHORIZED 1953

Ellen C. Tewes

Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; that Chapters 1 and 543 of the 98th General Assembly; that Chapters 1 and 554 of the 99th General Assembly; that Chapters 1 and 574 of the 100th General Assembly; that Chapters 1 and 574 of the 101st General Assembly; that Chapters 52 and 880 of the 102nd General Assembly and that Chapter 1 of the 103rd General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 17th day of August, 2004.

Riley C Darnell
Secretary of State

PART 2—VICTIM IMPACT STATEMENT ACT

40-38-203. Part definitions.

NOTES TO DECISIONS

3. "Victim".

Regarding restitution in an animal cruelty case, the humane society was a victim within the meaning of T.C.A. § 40-38-203(1), because T.C.A. § 39-14-210(f), by requiring that victimized animals be placed with state-chartered humane societies, created an obligation that removed the humane society from the status of a volunteer or Good Samaritan and resulted in costs and expenses to a society as a result of the mandated responsibility. State v. Webb, 130 S.W.3d 799 (Tenn. Crim. App. 2003).

PART 4—VICTIMS OF CRIME STATE COORDINATING COUNCIL

40-38-401. Creation.

Compiler's Notes. The victims council, created by this section, terminates June 30, 2010. See §§ 4-29-112, 4-29-231.

Section to Section References. This section is referred to in §§ 4-29-225 and 4-29-231.

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.

40-39-101 — 40-39-111 [Repealed.]

PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-201. Short title — Legislative findings.
40-39-202. Part definitions.
40-39-203. Offender registration — Registration forms — Contents.
40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions.
40-39-205. Creation and distribution of forms — Acknowledgement forms.
40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders.
40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.
40-39-208. Violations — Penalty — Venue — Providing records for prosecution.
40-39-209. Removing records from SOR.
40-39-210. Death of offender.
40-39-211. Residential and work restrictions.

PART 3—TENNESSEE SERIOUS AND VIOLENT SEX OFFENDER MONITORING PILOT PROJECT ACT

40-39-301. Part definitions.
40-39-302. Establishment of program — Promulgation of guidelines — Duties.
40-39-303. Enrollment in satellite-based monitoring programs as mandatory condition of release.
40-39-304. Offense of intentional tampering with, removal of, or vandalism to device — Aiding, abetting or assisting.
40-39-305. Fees — Waiver of fees.
40-39-306. Sharing of criminal incident information across state agencies and with vendor — Correlation reports.

40-39-101 — 40-39-111 [Repealed.]

Compiler's Notes. Former part 1, §§ 40-39-101 — 40-39-111, (Acts 1994, ch. 976, §§ 2-9; 1996, ch. 834, §§ 1-5; 1997, ch. 455, § 3; 1997, ch. 461, §§ 1-3; 1997, ch. 462, §§ 1, 2; 1997, ch.

466, § 1; 1998, ch. 1049, § 53; 2000, ch. 862, §§ 1-4, 5; 2000, ch. 882, § 1; 2000, ch. 997, §§ 1-4; 2002, ch. 469, §§ 2-11; 2002, ch. 749, § 1; 2003, ch. 95, § 1), concerning the Sexual Offender Registration and Monitoring Act, was repealed by Acts 2004, ch. 921, § 4, effective August 1, 2004.

Acts 2004, ch. 624, § 1, amended the first five sentences of § 40-39-106(f), effective May 10, 2004, through August 1, 2004. While in effect the first 5 sentences of § 40-39-106(f) read: "For all sexual offenses committed on or after July 1, 1997, the information concerning a registered sexual offender set out in subdivisions (f)(1)-(f)(10) shall be considered public information. In addition to making such information available in the same manner as other public records, the bureau shall prepare and place the information on the state of Tennessee's internet home page. The information contained in subdivision (f)(10) pertaining to sexual offenses committed between July 1, 1997, and October 27, 2002, shall be placed on the state of Tennessee's Internet home page by October 1, 2004. All such information shall become a part of the Tennessee Internet criminal information center when such center is created within the bureau. The bureau shall also establish and operate a toll-free telephone number, to be known as the 'Tennessee Internet Criminal Information Center Hotline' to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as sexual offenders as required by this chapter." For similar provisions, see § 40-39-206(e).

Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Part 2—Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004

40-39-201. Short title — Legislative findings. — (a) This part shall be known and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004."

(b) The general assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems which deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions which are implemented at sentencing, or at the time of release from incarceration, which require that those who are financially able must pay specified administrative costs to the appropriate registering agency, who shall retain these costs for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year; and

(8) The general assembly also declares, however, that in making information about certain offenders available to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such offenders. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Comparative Legislation. Registration of sexual offenders:

Ala. Code § 15-20-20 et seq.
Ark. Code § 12-12-901 et seq.
O.C.G.A § 42-1-12 et seq.
K.R.S. § 17.500 et seq.
Mo. Rev. Stat. § 589.400 et seq.
N.C. Gen. Stat. § 14-208 et seq.

40-39-202. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from such judgment. A "conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction in any other state of the United States, other jurisdiction, or other country. A conviction for an offense committed in another jurisdiction that would be classified as a "sexual offense" under subdivision (16) or a "violent sexual offense" under subdivision (24) if committed in this state shall be considered a "conviction" for purposes of this part;

(3) "Designated law enforcement agency" means any law enforcement agency which has jurisdiction over the primary or secondary residence, place of employment, school, or institution of higher education where the student is

enrolled or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, for more than fourteen (14) consecutive days, or for an aggregate period exceeding thirty (30) days in a calendar year, or any employment which involves counseling, coaching, teaching, supervising, or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's department;

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Offender" means both "sexual offender" and "violent sexual offender" unless otherwise designated. An offender who qualifies both as a sexual offender and as a violent sexual offender shall be considered a violent sexual offender;

(10) "Primary residence" means a place where the person abides, lodges, or resides for fourteen (14) or more consecutive days;

(11) "Registering agency" means a sheriff's department, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction (TDOC), a private contractor with the Tennessee department of correction (TDOC), or the board;

(12) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(10);

(13) "Resident" means any offender who resides in this state for a period of fourteen (14) consecutive days or for an aggregate period of thirty (30) days in a calendar year;

(14) "Secondary residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's primary residence, including any out-of-state address;

(15) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense as defined in subdivision (16), or has another qualifying conviction as defined in subdivision (2); provided, that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(16) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506;

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) Incest, under § 39-15-302;

(vi) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of such minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Attempt, under § 39-12-101, to commit any of the offenses enumerated within this subdivision (16)(A);

(ix) Solicitation, under § 39-12-102, to commit any of the offenses enumerated within this subdivision (16)(A);

(x) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (16)(A);

(xi) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (16)(A);

(xii) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (16)(A); or

(xiii) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (16)(A);

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed];

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of such minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated within this subdivision (16)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated within this subdivision (16)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated within this subdivision (16)(B); or

(xiv) Accessory before or after the fact or aider and abettor under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (16)(B);

(17) "SOR" means the TBI's centralized record system of offender registration, verification, and tracking information;

(18) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution including any secondary school, trade or professional institution or institution of higher learning;

(19) "TBI" means the Tennessee bureau of investigation;

(20) "TBI registration form" means the Tennessee sexual offender/violent sexual offender registration, verification and tracking form;

(21) "TDOC" means the Tennessee department of correction;

(22) "TIES" means the Tennessee information enforcement system;

(23) "Violent sexual offender" means a person who has a conviction as defined in subdivision (2) for a "violent sexual offense" as defined in subdivision (24), provided that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(24) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of such minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of such minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528;

(L) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated within this subdivision (24);

(M) Solicitation, under § 39-12-102, to commit any of the offenses enumerated within this subdivision (24); or

(N) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (24); and

(25) "Within forty-eight (48) hours" means a continuous forty-eight (48) hour period not including Saturdays, Sundays or federal or state holidays. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Section to Section References. This section is referred to in §§ 40-39-207, 40-39-209, 40-39-211.

40-39-203. Offender registration — Registration forms — Contents. — (a) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, or becoming employed or practicing a vocation, or becoming a student in this state, the offender shall register in person as required by the provisions of this part. Likewise, within forty-eight (48) hours of release on probation or any other alternative to incarceration, excluding parole, the offender shall register in person as required by the provisions of this part.

(b) An offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours prior to such offender's release, register in person, completing and signing a TBI registration form under the penalty of perjury pursuant to § 39-16-702(b)(3) as follows:

(1) If incarcerated in a state, federal, or private penal facility, with the warden or the warden's designee; or

(2) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(c) An offender from another state, jurisdiction, or country, who has established a primary or secondary residence within this state, shall, within forty-eight (48) hours of establishing such residency, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury pursuant to § 39-16-702(b)(3).

(d) An offender from another state, jurisdiction, or country, who is not a resident of this state, shall within forty-eight (48) hours of employment,

commencing practice of a vocation or becoming a student in this state, register in person, completing and signing a TBI registration form under the penalty of perjury pursuant to § 39-16-702(b)(3) with:

(1) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(2) The law enforcement agency of any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed, or practices a vocation, or is a student.

(e) An offender from another state, jurisdiction, or country, who becomes a resident of this state pursuant to the interstate compact act codified in title 40, chapter 28, part 4, shall register within forty-eight (48) hours of becoming a resident in person with the board, completing and signing a TBI registration form under the penalty of perjury pursuant to § 39-16-702(b)(3), in addition to the requirements of the interstate compact act and the sex offender directives from the board.

(f) Offenders who were previously required to register under title 40, chapter 39, part 1, shall register in person with the designated law enforcement agency within thirty (30) days of August 1, 2004. Offenders who reside in nursing homes and assisted living facilities are exempt from this requirement, as otherwise provided by this part.

(g) An offender who indicates to a designated law enforcement agency on the TBI registration form such offender's intent to reside in another state, jurisdiction, or country, and then who decides to remain in this state shall, within forty-eight (48) hours of the decision to remain in the state report in person to the designated law enforcement agency and update all information pursuant to subsection (h).

(h) TBI registration forms shall require the registrant's signature and disclosure of the following information under the penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases;

(2) Date and place of birth;

(3) Social security number;

(4) State of issuance and identification number of any valid driver license or licenses, or if no valid driver license card is held, any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at such address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer, or manufactured home, used as a primary or secondary residence, including descriptions, VIN, and license tag numbers;

(11) Any vessel, live-aboard vessel, or houseboat used as a primary or secondary residence, including the name of the vessel, description, and all other identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed, practices a vocation, or is a student;

(13) Race and gender;

(14) Name, address, and phone number of the offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults;

(16) Whether any minors reside in the primary or secondary residence; and

(17) Any other registration, verification, and tracking information, including a current photograph, as may be required by rules promulgated by the TBI in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(i) Not later than the third day after an offender's initial registration, the registering agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (h) to TBI headquarters in Nashville.

(j) The offender's signature on the TBI registration form creates the presumption that such offender has knowledge of the registration, verification, and tracking requirements of this part. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-205.

40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions. — (a) The TBI shall maintain and make available a connection to the SOR, for all criminal justice agencies with TIES (internet) capabilities by which registering agencies shall enter original, current and accurate data required by this part. TBI will provide viewing and limited write access directly to the SOR through TIES (internet) to registering agencies for the entry of record verification data, changes of residence, employment, or other pertinent data required by this part and to assist in offender identification. Registering agencies should immediately, but in no case shall exceed twelve (12) hours, enter all data received from the offender as required by the TBI and § 40-39-203(h), into the TIES (internet) for the enforcement of this part by TBI, designated law enforcement agencies, TDOC, private contractors with TDOC, and the board.

(b) At least once during the months of March, June, September, and December of each calendar year, all violent sexual offenders shall report in person to the designated law enforcement agency to update such offender's fingerprints, palm prints and photograph and to verify the continued accuracy of the information in the TBI registration form. Once a year during the March reporting, the violent sexual offender shall pay the specified administrative costs not to exceed sixty dollars ($60.00).

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update such offender's fingerprints, palm prints, and photograph, to verify the continued accuracy of the information in the TBI registration form, and to pay the specified administrative costs not to exceed sixty dollars ($60.00).

(d) Within three (3) days after the offender's verification, the designated law enforcement agency with whom the offender verified shall send by United States postal service the original signed TBI registration form containing information required by § 40-39-203(h) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other original forms required by § 40-39-207 which are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(e) If a person required to register under this part is re-incarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge, or any other form of alternative sentencing, the offender shall immediately report such offender's status as a sexual offender or violent sexual offender to the appropriate registering agency. Registration, verification and tracking requirements for such persons are tolled during the subsequent incarceration. Within forty-eight (48) hours of the release for any subsequent re-incarcerations, the offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration, verification, and tracking requirements are tolled during the period of deportation. Within forty-eight (48) hours of the return to this state after deportation, the offender shall register with the appropriate designated law enforcement agency.

(f) Nursing home and assisted living residents shall be exempted from the requirements of subsections (b) and (c). However, it shall be the responsibility of the offender, the offender's guardian, the offender's power of attorney, or in the absence thereof, the administrator of the facility, to report any changes in the residential status to TBI headquarters in Nashville by the United States postal service.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. By the authority established in § 40-39-206(f), the TBI shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

40-39-205. Creation and distribution of forms — Acknowledgement forms. — (a) TBI registration forms shall be designed, printed, and distributed by and at the expense of the TBI. These forms shall include instructions for compliance with this part and a statement of understanding and acknowledgment of those instructions to be signed by the offender. TBI registration forms shall be available from registering agencies, parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b)(1) The officer or employee responsible for supervising an offender who has been released on probation, parole, or any other alternative to incarceration, shall promptly:

(A) Obtain the offender's signed statement acknowledging that the named officer or employee:

(i) Has fully explained, and the offender understands, the registration, verification, and tracking requirements and sanctions of this part and the current sex offender directives established by the board; and

(ii) Has provided the offender with a blank TBI registration form and assisted the offender in completing the form; and

(B) Obtain a current photograph of the offender.

(2) The officer or employee shall immediately, but in no case longer than twelve (12) hours from registration, enter all data received from the offender as required by TBI and § 40-39-203(h) into the TIES (internet). The officer or employee shall within three (3) days send by United States postal service the signed and completed TBI registration form and photograph of the offender to TBI headquarters in Nashville. The registering agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(c) Not more than forty-eight (48) hours prior to the release of an offender from incarceration with or without supervision, the warden of the correctional facility or the warden's designee or sheriff of the jail or the sheriff's designee shall obtain the offender's signed statement acknowledging that the aforementioned official has fully explained, and the offender understands, the registration, verification, and tracking requirements, and sanctions of this part. If the offender is to be released without any type of supervision, the warden of the correctional facility or the warden's designee or sheriff of the jail or the sheriff's designee shall assist the offender in completing a TBI registration form. The aforementioned official shall also obtain a current photograph of the offender. Such official shall send by United States postal service the signed and

completed TBI registration form and a current photograph of the offender to TBI headquarters in Nashville within three (3) days of the release of the offender.

(d) If the offender is placed on unsupervised probation, the court shall fully explain to the offender on the court record the registration, verification, and tracking requirements, and sanctions of this part. The court shall then order the offender to report within forty-eight (48) hours in person to the appropriate registering agency to register as required by the provisions of this part.

(e) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all offenders, including those who move into this state, are informed and periodically reminded of the registration, verification, and tracking requirements, and sanctions of this part. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders. — (a) Using information received or collected pursuant to this part, the TBI shall establish, maintain, and update a centralized record system of offender registration, verification, and tracking information. The TBI may receive information from any credible source and may forward such information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification, and tracking information to the identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with the provisions of this part, pursuant to the powers enumerated in subsection (f), the TBI shall notify the district attorney general, designated law enforcement agencies, and the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release.

(c) For all sexual offenses, and offenses now defined as violent sexual offenses, committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on the TBI registration form shall be confidential; provided, however, that the TBI, a local law enforcement agency, or a law enforcement agency of any institution of higher education may release relevant information deemed necessary to protect the public concerning a specific offender who is required to register pursuant to this part.

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of

institutions of higher education, courts, probation and parole, the district attorneys general and their employees, and other public officers and employees assigned responsibility for sexual offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this part.

(e) For all sexual offenses, and offenses now defined as violent sexual offenses, committed on or after July 1, 1997, the information concerning a registered offender set out in subdivisions (e)(1)-(10) shall be considered public information. In addition to making such information available in the same manner as other public records, the TBI shall prepare and place the information on the state's internet homepage. This information shall become a part of the Tennessee internet criminal information center when such center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

(1) The offender's complete name as well as any aliases;

(2) The offender's date of birth;

(3) The sexual offense or offenses or violent sexual offense or offenses of which the offender has been convicted;

(4) The primary and secondary addresses including the house numbers, county, city, and ZIP code area in which the offender resides;

(5) The offender's race and gender;

(6) The date of the last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number and issuing state, or any state or federal issued identification number;

(9) The offender's probation and parole officer; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation, or is a student.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. Such rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Section to Section References. This section is referred to in §§ 40-39-202, 40-39-204.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration. — (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville.

(b) Upon receipt of the request for termination, the TBI shall review documentation contained in the offender's file and the SOR to determine whether the offender has complied with the provisions of this part. In addition, the TBI shall conduct fingerprint based state and federal criminal history record checks to determine whether the offender has been convicted of any additional sexual offenses as defined in § 40-39-202(16) or violent sexual offenses as defined in § 40-39-202(24).

(c) If it is determined that the offender has not been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period and the offender has substantially complied with the provisions of this part and any previous versions thereof, the TBI shall remove the offender's name from the SOR and notify the offender that such offender is no longer required to comply with the provisions of this part.

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with the provisions of this part and the previous versions thereof, the TBI shall not remove the offender's name from the SOR and shall notify the offender that such offender has not been relieved of the provisions of this part.

(e) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of such offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(f) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides if such county is in Tennessee, for review of such decision. Such review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons such request was denied.

(g)(1) An offender required to register under this part shall continue to comply with the registration, verification, and tracking requirements for the life of that person if that offender:

(A) Has one (1) or more prior convictions for a sexual offense as defined in § 40-39-202(16); or

(B) Has been convicted of a violent sexual offense as defined in § 40-39-202(24).

(2) As used in this subsection (g), "prior conviction" means any conviction for a sexual offense or violent sexual offense as defined in § 40-39-202(16) and

§ 40-39-202(24) which occurred prior to the date of the offense for which the offender is currently required to register. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Section to Section References. This section is referred to in § 40-39-204.

40-39-208. Violations — Penalty — Venue — Providing records for prosecution. — (a) It is an offense for an offender to knowingly violate any provision of this part. Such violations shall include, but not be limited to the following:

(1) Failure of an offender to timely register;

(2) Falsification of a TBI registration form;

(3) Failure to timely disclose required information to a designated law enforcement agency;

(4) Failure to sign a TBI registration form;

(5) Failure to pay the annual administrative costs, if financially able;

(6) Failure to timely disclose status as a sexual offender or violent sexual offender to the designated law enforcement agency upon re-incarceration;

(7) Failure to timely report to the designated law enforcement agency upon release after re-incarceration; and

(8) Failure to timely report to the designated law enforcement agency following re-entry in this state after deportation.

(b)(1) A violation of this part is a Class E felony.

(2) The first such violation is punishable by a fine of not less than three hundred fifty dollars ($350) and imprisonment for not less than ninety (90) days.

(3) A second violation is punishable by a fine of not less than six hundred dollars ($600) and imprisonment for not less than one hundred eighty (180) days.

(4) A third or subsequent violation is punishable by a fine of not less than one thousand one hundred dollars ($1,100) and imprisonment for not less than one (1) year.

(c) A violation of this part is a continuing offense. If an offender is required to register with the TBI pursuant to this part, venue lies in any county in which the offender may be found or in any county where the violation occurred.

(d)(1) In a prosecution for a violation of this section, upon the request of a district attorney general, law enforcement agency, the board of probation and parole, or its officers, or a court of competent jurisdiction, and for any lawful purpose permitted by this part, the records custodian of the TBI's centralized records system of offender registration, verification and tracking information

(SOR) shall provide the requesting agency with certified copies of specified records being maintained in the registry.

(2) The records custodian providing copies of records to a requesting agency pursuant to subdivision (d)(1), shall attach the following certification:

I,_____, HAVING BEEN APPOINTED BY THE DIRECTOR OF THE TENNESSEE BUREAU OF INVESTIGATION AS CUSTODIAN OF THE BUREAU'S CENTRALIZED RECORDS SYSTEM OF SEXUAL AND VIOLENT SEXUAL OFFENDERS, REGISTRATION, VERIFICATION AND TRACKING INFORMATION (SOR), HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECORDS MAINTAINED WITHIN SAID REGISTRY.

_____

SIGNATURE: TITLE

AFFIX THE BUREAU SEAL HERE [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Cross-References. Penalty for Class E felony, § 40-35-111.

40-39-209. Removing records from SOR. — Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

40-39-210. Death of offender. — Upon receipt of notice of the death of a registered offender, the TBI shall remove from the SOR all data pertaining to the deceased offender. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all

sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

40-39-211. Residential and work restrictions. — (a) No sexual offender, as defined in § 40-39-202(15), or violent sexual offender, as defined in § 40-39-202(23), shall knowingly reside or work within one thousand feet (1,000′) of the property on which any public school, private or parochial school, licensed day care center, or any other child care facility is located.

(b) No sexual offender, as defined in § 40-39-202(15), or violent sexual offender, as defined in § 40-39-202(23), shall knowingly reside within one thousand feet (1,000′) of the property on which the offender's former victims, or the victims' immediate family members, reside nor shall such offender knowingly come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law, or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim.

(c) No sexual offender, as defined in § 40-39-202(15), or violent sexual offender, as defined in § 40-39-202(23), shall knowingly reside where a minor resides. Notwithstanding this subsection (c), such an offender may reside with a minor if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d) Changes in the ownership or use of or person or entity that occupies property within one thousand feet (1,000′) of an offender's primary or secondary registered address which occur after an offender establishes residency or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(e) A violation of this section is a Class E felony. [Acts 2004, ch. 921, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-112), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Effective Dates. Acts 2004, ch. 921, § 6, August 1, 2004; provided that for purposes of the Tennessee bureau of investigation designing, printing, and distributing registration and other forms pursuant to § 40-39-205(a) and promulgating any rules, the act took effect June 8, 2004.

Cross-References. Penalty for Class E felony, § 40-35-111.

PART 3—TENNESSEE SERIOUS AND VIOLENT SEX OFFENDER MONITORING PILOT PROJECT ACT

40-39-301. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Serious offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any offense which may cause "serious bodily injury" as defined in § 39-11-106(a)(34). "Serious offender" includes any such person who is convicted in any other jurisdiction of any offense which would constitute a serious offense as defined in this chapter. "Serious offender" also includes any person who has been released on probation or parole following a conviction for any serious offense, as defined in this chapter, to the extent that such person continues to be subject to active supervision by the board of probation and parole;

(2) "Sexual offense" means any of the crimes enumerated in § 40-39-202(16), including specifically:

(A) The commission of any act that constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Sexual exploitation of a minor, under § 39-17-1003;

(vii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(viii) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(ix) Incest, under § 39-15-302;

(x) Rape of a child, under § 39-13-522;

(xi) Sexual battery by an authority figure, under § 39-13-527;

(xii) Solicitation of a minor, under § 39-13-528;

(B) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (2); or

(C) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (2); and

(3) "Violent sexual offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any sexual offense, as defined in subdivision (2) or § 40-39-202(16); or any such person who is convicted in any other jurisdiction of any offense which would constitute a sexual offense in Tennessee. "Violent sexual offender" also includes any person who has been released on probation or parole following a conviction for any sexual offense, as defined in subdivision (2), to the extent that such person continues to be subject to active supervision by the board of probation and parole as defined in law. For the purposes of this section, "violent sexual offender" may include offenders whose sexual offense was reduced by virtue of a plea agreement. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. Acts 2004, ch. 899, § 1 provided that the act shall be known and may be cited as the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act."

Acts 2004, ch. 899, § 2 provided that: "(a) It is the intent of the general assembly in enacting the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act" to utilize the latest technological solutions to monitor and track serious criminal offenders and violent sex offenders in a limited number of counties selected for the purpose of providing a cross-section of Tennessee in terms of location, population and geography.

"(b) In addition to providing this state with a more efficient and accurate method of monitoring and tracking these serious and predatory criminals, the purpose of the pilot project is to collect at least twelve (12) months of data on the experience of such a monitoring and tracking system in this state. This data will better enable the governor and general assembly to accurately determine the success or failure of such a program, whether it is worth the expenditure necessary to administer it and whether to expand the pilot project into a statewide program."

Acts 2004, ch. 899, § 3 provided that: "The general assembly hereby finds and declares the following:

"(a) The United States department of justice has published confirmed statistics that over sixty percent (60%) of serious and violent sex offenders in state prisons have a prior conviction history and that the number of prisoners convicted for violent sexual assault has increased by an annual percentage of fifteen percent (15%) each year since 1980;

"(b) Criminals who commit serious and violent sexual crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community;

"(c) Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community;

"(d) Mature technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders following their release;

"(e) These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly-updated geographic location of supervised serious offenders and violent sexual offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

"(f) Continuous twenty-four (24) hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation; who have failed to register as a sexual offender as required by law; or who have been released from incarceration while they remain under the active supervision of the department of correction, the board of probation and parole, or other state and local agencies."

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

Section to Section References. This section is referred to in § 40-39-303.

Comparative Legislation. Electronic monitoring:

O.C.G.A. § 16-7-29.

N.C. Gen. Stat. § 148-10.3.

40-39-302. Establishment of program — Promulgation of guidelines — Duties. — (a) The board of probation and parole is authorized to establish a serious offender and violent sexual offender monitoring program and to promulgate guidelines governing it, consistent with the provisions of this chapter.

(b) The board shall carry out the following duties:

(1) By December 31, 2004, in consultation with all participating state and local law enforcement, the board shall develop implementing guidelines for the continuous satellite-based monitoring of serious offenders and violent sexual offenders. Such a system may provide:

(A) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology;

(B) Reporting of subject's violations of prescriptive and proscriptive schedule/location requirements. Frequency of reporting may range from once-a-day (passive) to near real-time (active); and

(C) An automated system that provides local and state law enforcement with alerts to compare the geographic positions of monitored subjects with reported crime incidents and whether the subject was at or near such reported crime incidents. These alerts will enable authorities to include or exclude monitored subjects from an ongoing investigation.

(2) Prior to December 31, 2004, the board of probation and parole shall contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents using a system meeting the requirements described in subdivision (b)(1)(C).

(3) The board's contract with this vendor may provide for services necessary to implement or facilitate any of the provisions of this chapter including the collection and disposition of the charges and fees provided for in this chapter and § 40-28-201(a)(2) and to allow for the reasonable cost of collection of the proceeds.

(4) On or before March 1, 2005, the board shall make a report to a joint meeting of the judiciary committee of the senate and the house of representatives and the joint oversight committee on correction regarding the implementation of this part, and the results of the programs created by this part. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

Section to Section References. This section is referred to in §§ 40-39-303, 40-39-304, 40-39, 305, 40-39-306.

40-39-303. Enrollment in satellite-based monitoring programs as mandatory condition of release. — (a) Notwithstanding any other provision of law, the board of probation and parole may require, as a mandatory condition of release for any person convicted of a sexual offense as defined in § 40-39-301(2), that any person so released under its supervision be enrolled in a satellite-based monitoring program for the full extent of such person's term of probation or parole, consistent with the requirements of § 40-39-302.

(b) The board of probation and parole may require, as a mandatory condition of release for any person convicted of a serious offense as defined in this chapter or for such other offenders as the board deems appropriate, that such person be enrolled in a satellite-based monitoring program for the full extent of such person's term of probation or parole, consistent with the requirements of § 40-39-302.

(c) Offender participation in a location tracking and crime correlation based monitoring and supervision program under this section shall be at the sole discretion of the board and shall conform to the participant payment requirements stated in § 40-39-304, and be based upon such person's ability to pay. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

Section to Section References. This section is referred to in § 40-39-304.

40-39-304. Offense of intentional tampering with, removal of, or vandalism to device — Aiding, abetting or assisting. — (a) Intentional tampering with, removal of, or vandalism to a device issued pursuant to a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 by a person duly enrolled in such a program is a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for this Class A misdemeanor offense is mandatory, and no person committing such offense shall be eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent violation under this section is a Class E felony. Additionally, if the person violating this section is on probation, parole, or any other alternative to incarceration, then the violation shall also constitute sufficient grounds for immediate revocation of probation, parole, or other alternative to incarceration. Any violation of this section shall result in the imposition of the mandatory release condition specified in § 40-39-303(a) and (b).

(b) Any person who knowingly aids, abets, or assists a person duly enrolled in a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 in tampering with, removing, or vandalizing a device issued pursuant to such program commits a Class A misdemeanor. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Penalty for Class E felony, § 40-35-111.

Section to Section References. This section is referred to in § 40-39-303.

40-39-305. Fees — Waiver of fees. — (a) The board of probation and parole is authorized to assess a daily or monthly fee, as the board deems reasonable and necessary to effectuate the purposes of this program, from serious offenders and violent sexual offenders who are required by the board to participate in the sexual offender monitoring program described in § 40-39-302. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system. Fees assessed by the board pursuant to this program may be collected in accordance with § 40-39-302(b)(3).

(b) The board may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of such fee. The board shall waive only that portion of the surcharge which the offender is financially unable to pay. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

40-39-306. Sharing of criminal incident information across state agencies and with vendor — Correlation reports. — Notwithstanding

any other provision of law, the department of correction, the board of paroles, the Tennessee bureau of investigation, and all local law enforcement agencies are specifically authorized to share criminal incident information, limited to the time, place, and nature of the crime, with each other and the vendor selected by the department to carry out the purposes of this part, and the department is authorized to direct the vendor so chosen to use data collected pursuant to § 40-39-302(b) in preparing correlation reports as described in that subsection for distribution to and use by state and local law enforcement agencies. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Effective Dates. Acts 2004, ch. 899, § 7. July 1, 2004.

Tenn. Code Ann. § 40-39-101 *et seq*. (2006)

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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Ellen C. Tewes, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Tennessee Code Annotated, Section 1-1-110, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this Replacement Volume 7B; that the text of each section of the statutes of Tennessee printed or appearing in this Replacement Volume has been compared with the original section appearing in the published copies of the Public Acts; and, with the exception of changes permitted by Tennessee Code Annotated, Section 1-1-108, and with the exception of changes made necessary due to repeal by implication, express repeal and amendments by implication, the Code sections appearing in this Replacement Volume as codification of the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005 are true and correct copies of such sections as codified by Chapter 6 of the Public Acts of 1955; Chapter 1 of the Public Acts of 1957, of the Public Acts of 1959, of the Public Acts of 1961, of the Public Acts of 1963, of the Public Acts of 1965, of the Public Acts of 1967, of the Public Acts of 1969; Chapter 354 of the Public Acts of 1970; Chapter 1 of the Public Acts of 1971; Chapter 441 of the Public Acts of 1972; Chapter 1 of the Public Acts of 1973; Chapter 414 of the Public Acts of 1974; Chapter 1 of the Public Acts of 1975; Chapter 382 of the Public Acts of 1976; Chapter 1 of the Public Acts of 1977; Chapter 496 of the Public Acts of 1978; Chapter 1 of the Public Acts of 1979; Chapter 444 of the Public Acts of 1980; Chapter 1 of the Public Acts of 1981; Chapter 543 of the Public Acts of 1982; Chapter 1 of the Public Acts of 1983; Chapter 483 of the Public Acts of 1984; Chapter 2 of the Public Acts of 1985; Chapter 523 of the Public Acts of 1986; Chapter 786 of the Public Acts of 1986; Chapter 4 of the Public Acts of 1987; Chapter 458 of the Public Acts of 1988; Chapter 5 of the Public Acts of 1989; Chapter 668 of the Public Acts of 1990; Chapter 28 of the Public Acts of 1991; Chapter 528 of the Public Acts of 1992; Chapter 1 of the Public Acts of 1993; Chapter 543 of the Public Acts of 1994; Chapter 1 of the Public Acts of 1995; Chapter 554 of the Public Acts of 1996; Chapter 1 of the Public Acts of 1997; Chapter 574 of the Public Acts of 1998; Chapter 1 of the Public Acts of 1999; Chapter 574 of the Public Acts of 2000; Chapter 52 of the Public Acts of 2001; Chapter 491 of the Public Acts of 2002; Chapter 1 of the Public Acts of 2003; Chapter 437 of the Public Acts of 2004; Chapter 1 of the Public Acts of 2005; and Chapter 507 of the Public Acts of 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 14th day of September, 2006.

Ellen C. Tewes

Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that true and correct copies of the following acts, Chapter 6 of the Public Acts of the 79th General Assembly; and Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; Chapters 1 and 441 of the 87th General Assembly; Chapters 1 and 414 of the 88th General Assembly; Chapters 1 and 382 of the 89th General Assembly; Chapters 1 and 496 of the 90th General Assembly; Chapters 1 and 444 of the 91st General Assembly; Chapters 1 and 543 of the 92nd General Assembly; Chapters 1 and 483 of the 93rd General Assembly; Chapters 2, 523, and 786 of the 94th General Assembly; Chapters 4 and 458 of the 95th General Assembly; Chapters 5 and 668 of the 96th General Assembly; Chapters 28 and 528 of the 97th General Assembly; Chapters 1 and 543 of the 98th General Assembly; Chapters 1 and 554 of the 99th General Assembly; Chapters 1 and 574 of the 100th General Assembly; Chapters 1 and 574 of the 101st General Assembly; Chapters 52 and 491 of the 102nd General Assembly; Chapters 1 and 437 of the 103rd General Assembly; and that Chapters 1 and 507 of the 104th General Assembly of the State of Tennessee, the originals of which are on file in the Office of the Secretary of State, were transmitted to the Tennessee Code Commission for publication in this Replacement Volume 7B.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee, at Nashville, on the 14th day of September, 2006.

Riley C Darnell
Secretary of State

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.

PART 1—SEXUAL OFFENDER REGISTRATION AND MONITORING ACT [REPEALED]

40-39-101 — 40-39-111. [Repealed.]

PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-201. Short title — Legislative findings.
40-39-202. Part definitions.
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40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.
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40-39-209. Removing records from SOR.
40-39-210. Death of offender.
40-39-211. Residential and work restrictions.

PART 3—TENNESSEE SERIOUS AND VIOLENT SEX OFFENDER MONITORING PILOT PROJECT ACT

40-39-301. Part definitions.
40-39-302. Establishment of program — Promulgation of guidelines — Duties.
40-39-303. Enrollment in satellite-based monitoring programs as mandatory condition of release.
40-39-304. Offense of intentional tampering with, removal of, or vandalism to device — Aiding, abetting or assisting.
40-39-305. Fees — Waiver of fees.
40-39-306. Sharing of criminal incident information across state agencies and with vendor — Correlation reports.

PART 1—SEXUAL OFFENDER REGISTRATION AND MONITORING ACT [REPEALED]

40-39-101 — 40-39-111. [Repealed.]

Compiler's Notes. Former part 1, §§ 40-39-101 — 40-39-111, (Acts 1994, ch. 976, §§ 2-9; 1996, ch. 834, §§ 1-5; 1997, ch. 455, § 3; 1997, ch. 461, §§ 1-3; 1997, ch. 462, §§ 1, 2; 1997, ch. 466, § 1; 1998, ch. 1049, § 53; 2000, ch. 862, §§ 1-4, 5; 2000, ch. 882, § 1; 2000, ch. 997, §§ 1-4; 2002, ch. 469, §§ 2-11; 2002, ch. 749, § 1; 2003, ch. 95, § 1), concerning the Sexual Offender Registration and Monitoring Act, was repealed by Acts 2004, ch. 921, § 4, effective August 1, 2004.

Acts 2004, ch. 624, § 1, amended the first five sentences of § 40-39-106(f), effective May 10, 2004, through August 1, 2004. While in effect the first 5 sentences of § 40-39-106(f) read:

"For all sexual offenses committed on or after July 1, 1997, the information concerning a registered sexual offender set out in subdivisions (f)(1)-(f)(10) shall be considered public information. In addition to making such information available in the same manner as other public records, the bureau shall prepare and place the information on the state of Tennessee's internet home page. The information contained in subdivision (f)(10) pertaining to sexual offenses committed between July 1, 1997, and October 27, 2002, shall be placed on the state of Tennessee's Internet home page by October 1, 2004. All such information shall become a part of the Tennessee Internet criminal information center when such center is created within the bureau. The bureau shall also establish and operate a toll-free telephone number, to be known as the 'Tennessee Internet Criminal Information Center Hotline' to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as sexual offenders as required by this chapter."For similar provisions, see § 40-39-206(e).

Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that:"It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Part 2—Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004

40-39-201. Short title — Legislative findings. — (a) This part shall be known as and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004."

(b) The general assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part, to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions that are implemented at sentencing, or, at the time of release from incarceration, that require that those who are financially able must pay specified administrative costs to the appropriate registering agency, which shall retain these costs for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year; and

(8) The general assembly also declares, however, that in making information about certain offenders available to the public, the general assembly does not intend that the information be used to inflict retribution or additional punishment on those offenders. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Section to Section References. This part is referred to in § 41-51-104.

Attorney General Opinions. Constitutionality of proposed legislation regarding registration and reporting requirements for sex offenders, OAG 04-069 (4/20/04).

Comparative Legislation. Registration of sexual offenders:

Ala. Code § 15-20-20 et seq.
Ark. Code § 12-12-901.
O.C.G.A § 42-1-12 et seq.
K.R.S. § 17.500 et seq.
Mo. Rev. Stat. § 589.400 et seq.
N.C. Gen. Stat. § 14-208 et seq.

Collateral References. 21A Am. Jur. 2d Criminal Law § 13.20.

53 Am. Jur. 2d Mentally Impaired Persons §§ 137, 141.

40-39-202. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. A "conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including courts-martial conducted by the armed forces of the United States, and a conviction in any other state of the United States, other jurisdiction, or other country. A conviction for an offense committed in another jurisdiction that would be classified as a "sexual offense" under subdivision (17) or a "violent sexual offense" under subdivision (25), if committed in this state, shall be considered a "conviction" for the purposes of this part. Conviction does not include a disposition of pretrial diversion under § 40-15-105, a disposition of judicial diversion under § 40-35-313, or the equivalent dispositions from other jurisdictions;

(3) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of employment, school, or institution of higher education where the student is enrolled, or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Offender" means both "sexual offender" and "violent sexual offender", unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender;

(10) "Parent" means any biological parent, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian; provided, however, that "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(11) "Primary residence" means a place where the person abides, lodges, resides, or establishes any other living accommodations in this state for five (5) consecutive days;

(12) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the TDOC, a private contractor with the TDOC, or the board;

(13) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(10);

(14) "Resident" means any person who abides, lodges, resides, or establishes any other living accommodations in this state;

(15) "Secondary residence" means a place where the person abides, lodges, or resides, or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year, and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(16) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense as defined in subdivision (17); or has another qualifying conviction as defined in subdivision (2); provided, that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to

incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(17) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant was an authority figure, as defined in § 39-13-527 (a)(3)(A) and (B), to the victim, or if the defendant has at least one (1) prior conviction for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c);

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) Incest, under § 39-15-302;

(vi) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507;

(ix) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (17)(A);

(x) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (17)(A);

(xi) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (17)(A);

(xii) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (17)(A);

(xiii) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (17)(A);

(xiv) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (17)(A);

(xv) Aggravated statutory rape, under § 39-13-506(c); or

(xvi) Exploitation of a minor by electronic means, under § 39-13-529; provided, that the victim of the offense is less than thirteen (13) years of age;

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed];

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (17)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (17)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (17)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (17)(B);

(18) "SOR" means the TBI's centralized record system of offender registration, verification, and tracking information;

(19) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(20) "TBI" means the Tennessee bureau of investigation;

(21) "TBI registration form" means the Tennessee sexual offender/violent sexual offender registration, verification, and tracking form;

(22) "TDOC" means the Tennessee department of correction;

(23) "TIES" means the Tennessee information enforcement system;

(24) "Violent sexual offender" means a person who has a conviction, as defined in subdivision (2), for a "violent sexual offense", as defined in subdivision (25); provided, that:

(A) The conviction occurs on or after January 1, 1995; or

(B) If the conviction occurred prior to January 1, 1995, the person:

(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

(iii) Is discharged from incarceration without supervision on or after January 1, 1995;

(25) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];

(N) Criminal exposure to HIV, under 39-13-109(a)(1);

(O) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (25);

(P) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (25);

(Q) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (25);

(R) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (25); or

(S) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (25); and

(26) "Within forty-eight (48) hours" means a continuous forty-eight-hour period, not including Saturdays, Sundays, or federal or state holidays. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 6-9.]

Compiler's Notes. The bracketed references are set out to reflect the repeal of § 39-13-507 by Acts 2005, ch. 456, § 2, effective June 18, 2005.

Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment added the proviso at the end of (10); added ", if the defendant was an authority figure, as defined in § 39-13-527(a)(1) and (a)(2), to the victim or if the defendant has at least one (1) prior conviction for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c)" at the end of (17)(A)(ii); substituted "for those committing the offense prior to June 18, 2005, under former § 39-13-507" for "under § 39-13-507(d)(1)" under (17)(A)(viii); and added (17)(xv) and (17)(xvi).

Effective Dates. Acts 2006, ch. 890, § 26. June 20, 2006 for the purpose of promulgating standardized photograph specifications and July 1, 2006, for all other purposes.

Section to Section References. This section is referred to in §§ 40-29-204, 40-39-207, 40-39-209, 40-39-211, 40-39-301.

40-39-203. Offender registration — Registration forms — Contents. — (a)(1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, or becoming employed or practicing a vocation or becoming a student in this state, the offender shall register in person, as required by the provisions of this

part. Likewise, within forty-eight (48) hours of release on probation or any other alternative to incarceration, excluding parole, the offender shall register in person, as required by the provisions of this part.

(2) An offender who resides and is registered in this state who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of the intention to move to another state, report to the offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

(b)(1) An offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours prior to the offender's release, register in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal, or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(2) After registering with the incarcerating facility as provided in subdivision (b)(1), an offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours after the offender's release from the incarcerating institution, report in person to the offender's registering agency, unless the place of incarceration is also the person's registering agency.

(c) An offender from another state, jurisdiction, or country who has established a primary or secondary residence within this state, or has established a physical presence at a particular location, shall, within forty-eight (48) hours of establishing residency or a physical presence, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3).

(d) An offender from another state, jurisdiction, or country, who is not a resident of this state, shall, within forty-eight (48) hours of employment, commencing practice of a vocation or becoming a student in this state, register in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), with:

(1) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(2) The law enforcement agency of any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(e) An offender from another state, jurisdiction, or country, who becomes a resident of this state, pursuant to the interstate compact provisions of title 40, chapter 28, part 4, shall, within forty-eight (48) hours of entering the state, register in person with the board, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), in addition to the requirements of title 40, chapter 28, part 4, and the sex offender directives from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the registration requirements of this part.

(g) Offenders who were previously required to register under title 40, chapter 39, part 1 [repealed], shall register in person with the designated law enforcement agency by August 31, 2005. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form the offender's intent to reside in another state, jurisdiction, or country, and who then decides to remain in this state, shall, within forty-eight (48) hours of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (i).

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under the penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases;

(2) Date and place of birth;

(3) Social security number;

(4) State of issuance and identification number of any valid driver license or licenses, or if no valid driver license card is held, any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer, or manufactured home, used or owned by an offender, including descriptions, vehicle identification numbers, and license tag numbers;

(11) Any vessel, live-aboard vessel, or houseboat used by an offender, including the name of the vessel, description, and all identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed or practices a vocation, or is a student;

(13) Race and gender;

(14) Name, address, and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults, and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known;

(16) Whether any minors reside in the primary or secondary residence; and

(17)(A) Any other registration, verification, and tracking information, including fingerprints and a current photograph of the offender, vehicles and

vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(B) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by this subdivision (i)(17)(A). The rules shall specify that the photograph or digital image submitted for each offender must conform to the following compositional specifications or the entry will not be accepted for use on the registry and the agency will be required to resubmit the photograph:

(i) Head Position:

(a) The person being photographed must directly face the camera;

(b) The head of the person should not be tilted up, down, or to the side; and

(c) The head of the person should cover about 50% of the area of the photo;

(ii) Background:

(a) The person being photographed should be in front of a neutral, light-colored background; and

(b) Dark or patterned backgrounds are not acceptable;

(iii) The photograph must be in focus;

(iv) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted;

(v) Head Coverings and Hats:

(a) Photographs of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; and

(b) Photos of applicants with tribal or other headgear not specifically religious in nature are not permitted.

(j) No later than the third day after an offender's initial registration, the registration agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (i) to TBI headquarters in Nashville.

(k) The offender's signature on the TBI registration form creates the presumption that the offender has knowledge of the registration, verification, and tracking requirements of this part. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 10-14.]

Compiler's Notes. Former title 40, ch. 39, part 1, referred to in this section, was repealed, effective August 1, 2004, by Acts 2004, ch. 921, § 4.

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment rewrote (a); added (b)(2); rewrote (c); inserted "or owned" in (i)(10); added ", and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known" at the end of (i)(15); and added (i)(17)(B).

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Interstate compact for

supervision of adult offender, title 40, ch. 28, part 4.
Perjury, § 39-16-702.
Probation, paroles, and pardons, title 40, ch. 28.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-205.

40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions. — (a) The TBI shall maintain and make available a connection to the SOR, for all criminal justice agencies with TIES internet capabilities, by which registering agencies shall enter original, current and accurate data required by this part. The TBI shall provide viewing and limited write access directly to the SOR through the TIES internet to registering agencies for the entry of record verification data, changes of residence, employment, or other pertinent data required by this part, and to assist in offender identification. Registering agencies should immediately, but in no case to exceed twelve (12) hours from registration, enter all data received from the offender as required by the TBI and § 40-39-203(i), into the TIES internet for the enforcement of this part by TBI, designated law enforcement agencies, TDOC, private contractors with TDOC, and the board.

(b) At least once during the months of March, June, September, and December of each calendar year, all violent sexual offenders shall report in person to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information in the TBI registration form. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from the in-person reporting and fingerprinting, as otherwise provided by this part. Once a year, the violent sexual offender shall pay the specified administrative costs, not to exceed one hundred dollars ($100), which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from paying the administrative cost, as otherwise provided by this part.

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form, and to pay the specified administrative costs, not to exceed one hundred dollars ($100), which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and

assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from the in-person reporting and fingerprinting and administrative cost, as otherwise provided by this part.

(d) Within three (3) days after the offender's verification, the designated law enforcement agency with whom the offender verified shall send by United States postal service the original signed TBI registration form containing information required by § 40-39-203(i) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other forms required by § 40-39-207 that are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(e) If a person required to register under this part is reincarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge, or any other form of alternative sentencing, the offender shall immediately report the offender's status as a sexual offender or violent sexual offender to the facility where the offender is incarcerated or detained, and notify the offender's appropriate registering agency, if different, that the offender is currently being detained or incarcerated. Registration, verification and tracking requirements for such persons are tolled during the subsequent incarceration. Within forty-eight (48) hours of the release from any subsequent reincarcerations, the offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration, verification and tracking requirements for such persons are tolled during the period of deportation. Within forty-eight (48) hours of the return to this state after deportation, the offender shall register with the appropriate designated law enforcement agency.

(f) Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, shall be exempted from the in-person reporting, fingerprinting, and administrative cost requirements. However, it shall be the responsibility of the offender, the offender's guardian, the person holding the offender's power of attorney, or in the absence thereof, the administrator of the facility, to report any changes in the residential status to TBI headquarters in Nashville by United States postal service.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. By the authority established in § 40-39-206(f), the TBI shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 15, 16.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law

shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment deleted "during the March reporting" following "Once a year" at the beginning of the third sentence in (b); and substituted "the facility where such offender is incarcerated or detained and notify the offender's appropriate registering agency, if different, that the offender is currently being detained or incarcerated" for "the appropriate registering agency" at the end of the first sentence in (e).

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Alternative sentencing, § 40-35-104.

Probation, paroles, and pardons, title 40, ch. 28.

Revocation of probation, §§ 40-35-310, 40-35-311.

NOTES TO DECISIONS

1. In General.

In a case under repealed statute T.C.A. § 47-8-319, a letter did not satisfy the "writing" component of the statute of frauds regarding the sale or purchase of securities, in effect when the oral agreement was made, because the party against whom enforcement was sought had already nullified the oral agreement when the letter was sent and the appellate court was unable to envision a circumstance whereby a three-year delay in submitting written confirmation was confirmation "within a reasonable time." Wilson v. Smythe, — S.W.3d —, 2004 Tenn. App. LEXIS 833 (Tenn. Ct. App. Dec. 10, 2004).

40-39-205. Creation and distribution of forms — Acknowledgement forms. — (a) TBI registration forms shall be designed, printed, and distributed by and at the expense of the TBI. These forms shall include instructions for compliance with this part and a statement of understanding and acknowledgment of those instructions to be signed by the offender. TBI registration forms shall be available from registering agencies, parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community.

(b) It shall be the duty of the offender's designated registering agency, its representatives and designees, including any district attorney general's criminal investigator, to verify the accuracy and completeness of all information contained in the offender's SOR.

(c) The officer or employee responsible for supervising an offender who has been released on probation, parole, or any other alternative to incarceration shall:

(1) Promptly obtain the offender's signed statement acknowledging that the named officer or employee has:

(A) Fully explained, and the offender understands, the registration, verification, and tracking requirements and sanctions of this part and the current sex offender directives established by the board;

(B) Provided the offender with a blank TBI registration form and assisted the offender in completing the form; and

(C) Obtained fingerprints, palm prints and photographs of the offender, and vehicles and vessels, as determined necessary by the agency;

(2) Immediately, but in no case to exceed twelve (12) hours from registration, enter all data received from the offender, as required by the TBI and § 40-39-203(i), into the TIES internet. The officer or employee shall, within three (3) days, send by United States postal service the signed and completed TBI registration form to TBI headquarters in Nashville. The photographs of the offender, vehicles and vessels, and the fingerprints should also be sent by United States postal service within three (3) days, if not electronically submitted to TBI headquarters in Nashville. The registering agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(d) Not more than forty-eight (48) hours prior to the release of an offender from incarceration, with or without supervision, the warden of the correctional facility or the warden's designee, or sheriff of the jail or the sheriff's designee, shall obtain the offender's signed statement acknowledging that the official has fully explained, and the offender understands, the registration, verification, and tracking requirements, and sanctions of this part. If the offender is to be released with or without any type of supervision, the warden of the correctional facility or the warden's designee, or sheriff of the jail or the sheriff's designee, shall assist the offender in completing a TBI registration form. The warden or the warden's designee, or the sheriff or the sheriff's designee, shall also obtain fingerprints, palm prints and photographs of the offender, vehicles and vessels, as determined necessary by the agency. The official shall send by United States postal service the signed and completed TBI registration form to TBI headquarters in Nashville within three (3) days of the release of the offender. The photographs of the offender, vehicles and vessels, and the fingerprints should also be sent by United States postal service within three (3) days, if not electronically submitted to TBI headquarters in Nashville.

(e) If the offender is placed on unsupervised probation, the court shall fully explain to the offender, on the court record, the registration, verification, and tracking requirements, and sanctions of this part. The court shall then order the offender to report within forty-eight (48) hours, in person, to the appropriate registering agency to register as required by the provisions of this part.

(f) Through press releases, public service announcements, or through other appropriate public information activities, the TBI shall attempt to ensure that all offenders, including those who move into this state, are informed and periodically reminded of the registration, verification, and tracking requirements, and sanctions of this part. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 17.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immedi-

ately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment rewrote (b) which read: "All information contained in the SOR may be verified by any designated law enforcement agency, as well as any district attorney general's criminal investigator."

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Probation, paroles and pardons, title 40, ch. 28.

40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders. — (a) Using information received or collected pursuant to this part, the TBI shall establish, maintain, and update a centralized record system of offender registration, verification, and tracking information. The TBI may receive information from any credible source and may forward the information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification, and tracking information to the identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with the provisions of this part, pursuant to the powers enumerated in subsection (f), the TBI shall make the information available through the SOR to the district attorney general, designated law enforcement agencies, and the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release.

(c) For all sexual offenses, and offenses now defined as violent sexual offenses, committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on the TBI registration form shall be confidential; provided, that the TBI, a local law enforcement agency, or a law enforcement agency of any institution of higher education may release relevant information deemed necessary to protect the public concerning a specific offender who is required to register pursuant to this part.

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of institutions of higher education, courts, probation and parole, the district attorneys general and their employees, and other public officers and employees assigned responsibility for offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this part.

(e) For all sexual offenses, and offenses now defined as violent sexual offenses, committed on or after July 1, 1997, the information concerning a registered offender set out in subdivisions (e)(1)-(10) shall be considered public information. In addition to making the information available in the same manner as public records, the TBI shall prepare and place the information on the state's Internet homepage. This information shall become a part of the Tennessee internet criminal information center when that center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a

named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

(1) The offender's complete name, as well as any aliases;

(2) The offender's date of birth;

(3) The sexual offense or offenses, or violent sexual offense or offenses of which the offender has been convicted;

(4) The primary and secondary addresses, including the house number, county, city, and ZIP code in which the offender resides;

(5) The offender's race and gender;

(6) The date of last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number and issuing state, or any state or federal issued identification number;

(9) The offender's parole or probation officer; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. These rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Section to Section References. This section is referred to in §§ 40-39-202, 40-39-204.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration. — (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with the provisions

of this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202(17), or violent sexual offenses, as defined in § 40-39-202(25).

(c) If it is determined that the offender has not been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period, and that the offender has substantially complied with the provisions of this part and former part 1 of this chapter, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with the provisions of this part and former part 1 of this chapter, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(f) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(1) An offender required to register under this part shall continue to comply with the registration, verification, and tracking requirements for the life of that offender, if that offender:

(A) Has one (1) or more prior convictions for a sexual offense, as defined in § 40-39-202(17); or

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202(25).

(2) As used in subdivision (f)(1), "prior conviction" means any conviction for a sexual offense or violent sexual offense, as defined in § 40-39-202(17) and (25), respectively, that occurred prior to the date of the offense for which the offender is currently required to register.

(g)(1) Any offender required to register pursuant to this chapter because the offender was convicted of the offense of statutory rape under § 39-13-506, and the offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville, if the offender would not be required to register if the offense was committed on or after July 1, 2006.

(2) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender would not be required to register

if the offender committed the same offense on or after July 1, 2006. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(3) If it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses, and that the offender has substantially complied with the provisions of this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the period of registration or has not substantially complied with the provisions of this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 18.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment added (g).

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Alternative sentencing, § 40-35-104.

Prior conviction, defined, § 40-39-202.

Probation, paroles and pardons, title 40, ch. 28.

Section to Section References. This section is referred to in § 40-39-204.

40-39-208. Violations — Penalty — Venue — Providing records for prosecution. — (a) It is an offense for an offender to knowingly violate any provision of this part. Violations shall include, but not be limited to, the following:

(1) Failure of an offender to timely register;

(2) Falsification of a TBI registration form;

(3) Failure to timely disclose required information to the designated law enforcement agency;

(4) Failure to sign a TBI registration form;

(5) Failure to pay the annual administrative costs, if financially able;

(6) Failure to timely disclose status as a sexual offender or violent sexual offender to the designated law enforcement agency upon reincarceration;

(7) Failure to timely report to the designated law enforcement agency upon release after reincarceration;

(8) Failure to timely report to the designated law enforcement agency following re-entry in this state after deportation; and

(9) Failure to timely report to the offender's designated law enforcement agency when the offender moves to another state.

(b) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(c) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350), and imprisonment for not less than ninety (90) days.

(d) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600), and imprisonment for not less than one hundred eighty (180) days.

(e) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100), and imprisonment for not less than one (1) year.

(f) A violation of this part is a continuing offense. If an offender is required to register pursuant to this part, venue lies in any county in which the offender may be found or in any county where the violation occurred.

(g) In a prosecution for a violation of this section, upon the request of a district attorney general, law enforcement agency, the board of probation and parole, or its officers, or a court of competent jurisdiction, and for any lawful purpose permitted by this part, the records custodian of SOR shall provide the requesting agency with certified copies of specified records being maintained in the registry.

(h) The records custodian providing copies of records to a requesting agency, pursuant to subsection (g), shall attach the following certification:

I, _____, HAVING BEEN APPOINTED BY THE DIRECTOR OF THE TENNESSEE BUREAU OF INVESTIGATION AS CUSTODIAN OF THE BUREAU'S CENTRALIZED RECORDS SYSTEM OF SEXUAL AND VIOLENT SEXUAL OFFENDERS, REGISTRATION, VERIFICATION AND TRACKING INFORMATION (SOR), HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECORDS MAINTAINED WITHIN SAID REGISTRY.

SIGNATURE _____ TITLE _____ DATE _____

AFFIX THE BUREAU SEAL HERE

[Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 19.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part

existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment added (a)(9) and made related stylistic changes.

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Penalty for Class E felony, § 40-35-111.

Probation, paroles and pardons, title 40, ch. 28.

40-39-209. Removing records from SOR. — Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

40-39-210. Death of offender. — Upon receipt of notice of the death of a registered offender, the TBI shall remove all data pertaining to the deceased offender from the SOR. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

40-39-211. Residential and work restrictions. — (a) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly establish a primary or secondary resi-

dence or any other living accommodation, or knowingly obtain sexual offender treatment or attend a sexual offender treatment program, or knowingly accept employment, within one thousand feet (1,000′) of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.

(b) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly reside within one thousand feet (1,000′) of the property line on which the offender's former victims, or the victims' immediate family members, reside, nor shall the offender knowingly come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law.

(c) While mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly establish a primary or secondary residence or any other living accommodation where a minor resides. Notwithstanding this subsection (c), such an offender may reside with a minor, if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d) Changes in the ownership or use of property within one thousand feet (1,000′) of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(e) A violation of this section is a Class E felony. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 20.]

Compiler's Notes. Acts 2004, ch. 921, § 3 provided that, if the provisions of that act are declared to be invalid, the provisions of former part 1 (§§ 40-39-101 — 40-39-111), as such part existed on July 31, 2004, shall be revived and take full force and effect; and further provided that: "It is the intent of the general assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state."

Acts 2004, ch. 921, § 4 provided that all sexual offenders who were, prior to August 1, 2004, subject to the provisions of title 40, chapter 39, part 1, shall, on and after August 1, 2004, be subject to the provisions of title 40, chapter 39, part 2, created by that act.

Acts 2005, ch. 316, § 2, provides that: if the provisions of that act are declared to be invalid, the provisions of title 40, chapter 39, part 1, as such part existed on July 31, 2004, shall be revived and take full force and effect. It is the intent of the General Assembly that, if this act is declared invalid, the prior law shall immediately govern and regulate the registration, verification and tracking of sexual offenders in this state.

Amendments. The 2006 amendment, in (a), inserted "or knowingly obtain sexual offender treatment or attend a sexual offender treatment program," near the middle and substituted ", other child care facility, public park, playground, recreation center or public athletic field available for use by the general public" for "or any other child care facility is located" at the end.

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Penalty for Class E felony, § 40-35-111.

PART 3—TENNESSEE SERIOUS AND VIOLENT SEX OFFENDER MONITORING PILOT PROJECT ACT

40-39-301. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Serious offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any offense which may cause "serious bodily injury" as defined in § 39-11-106(a)(34). "Serious offender" includes any person who is convicted in any other jurisdiction of any offense that would constitute a serious offense as defined in this part. "Serious offender" also includes any person who has been released on probation or parole following a conviction for any serious offense, as defined in this part, to the extent that the person continues to be subject to active supervision by the board of probation and parole;

(2) "Sexual offense" means any of the crimes enumerated in § 40-39-202(16), including specifically:

(A) The commission of any act that constitutes the criminal offense of:

(i) Aggravated rape, under § 39-13-502;

(ii) Rape, under § 39-13-503;

(iii) Aggravated sexual battery, under § 39-13-504;

(iv) Sexual battery, under § 39-13-505;

(v) Statutory rape, under § 39-13-506;

(vi) Sexual exploitation of a minor, under § 39-17-1003;

(vii) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(viii) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(ix) Incest, under § 39-15-302;

(x) Rape of a child, under § 39-13-522;

(xi) Sexual battery by an authority figure, under § 39-13-527;

(xii) Solicitation of a minor, under § 39-13-528;

(B) Criminal attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated within this subdivision (2); or

(C) Criminal responsibility under § 39-11-402(2) for facilitating the commission under § 39-11-403 of, or being an accessory after the fact under, § 39-11-411 to any of the offenses enumerated in this subdivision (2); and

(3) "Violent sexual offender" means any person who is convicted in the state of Tennessee, on or after July 1, 2004, of any sexual offense, as defined in subdivision (2) or § 40-39-202; or any person who is convicted in any other jurisdiction of any offense that would constitute a sexual offense in Tennessee. "Violent sexual offender" also includes any person who has been released on probation or parole following a conviction for any sexual offense, as defined in subdivision (2), to the extent that the person continues to be subject to active supervision by the board of probation and parole as defined in law. For the purposes of this section, "violent sexual offender" may include offenders whose sexual offense was reduced by virtue of a plea agreement. [Acts 2004, ch. 899, § 5; 2006, ch. 890, § 21.]

Compiler's Notes. Acts 2004, ch. 899, § 1 provided that the act shall be known and may be cited as the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act."

Acts 2004, ch. 899, § 2 provided that:"(a) It is the intent of the general assembly in enacting the "Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act" to utilize the latest technological solutions to monitor and track serious criminal offenders and violent sex offenders in a limited number of counties selected for the purpose of providing a cross-section of Tennessee in terms of location, population and geography.

"(b) In addition to providing this state with a more efficient and accurate method of monitoring and tracking these serious and predatory criminals, the purpose of the pilot project is to collect at least twelve (12) months of data on the experience of such a monitoring and tracking system in this state. This data will better enable the governor and general assembly to accurately determine the success or failure of such a program, whether it is worth the expenditure necessary to administer it and whether to expand the pilot project into a statewide program."

Acts 2004, ch. 899, § 3 provided that:"The general assembly hereby finds and declares the following:

"(a) The United States department of justice has published confirmed statistics that over sixty percent (60%) of serious and violent sex offenders in state prisons have a prior conviction history and that the number of prisoners convicted for violent sexual assault has increased by an annual percentage of fifteen percent (15%) each year since 1980;

"(b) Criminals who commit serious and violent sexual crimes have shown unusually high recidivism rates, thereby posing an unacceptable level of risk to the community;

"(c) Intensive supervision of serious offenders and violent sex offenders is a crucial element to both the rehabilitation of the released convict and the safety of the surrounding community;

"(d) Mature technological solutions now exist to provide improved supervision and behavioral control of serious offenders and violent sex offenders following their release;

"(e) These solutions can now also provide law enforcement and correctional professionals with significant new tools for electronic correlation of the constantly-updated geographic location of supervised serious offenders and violent sexual offenders following their release with the geographic location of reported crimes, both to possibly link released offenders to crimes or to possibly exclude released offenders from ongoing criminal investigations; and

"(f) Continuous twenty-four (24) hours a day, seven (7) days a week electronic monitoring of those convicted of serious and violent sexual offenses is a valuable and reasonable requirement for those convicts who are placed on probation; who have failed to register as a sexual offender as required by law; or who have been released from incarceration while they remain under the active supervision of the department of correction, the board of probation and parole, or other state and local agencies."

Amendments. The 2006 amendment deleted "(16)" following "§ 40-39-202" in the first sentence of (3).

Effective Dates. Acts 2006, ch. 890, § 26. July 1, 2006.

Cross-References. Probation, paroles and pardons, title 40, ch. 28.

Section to Section References. This section is referred to in § 40-39-303.

Comparative Legislation. Electronic monitoring:

O.C.G.A. § 16-7-29.

N.C. Gen. Stat. § 148-10.3.

Collateral References. 21A Am. Jur. 2d Criminal Law § 13.20.

53 Am. Jur. 2d Mentally Impaired Persons §§ 137, 141.

40-39-302. Establishment of program — Promulgation of guidelines — Duties. — (a) The board of probation and parole is authorized to establish a serious offender and violent sexual offender monitoring program and to promulgate guidelines governing it, consistent with the provisions of this part.

(b) The board shall carry out the following duties:

(1) By December 31, 2004, in consultation with all participating state and local law enforcement, the board shall develop implementing guidelines for the continuous satellite-based monitoring of serious offenders and violent sexual offenders. The system may provide:

(A) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology;

(B) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once-a-day (passive) to near real-time (active); and

(C) An automated system that provides local and state law enforcement with alerts to compare the geographic positions of monitored subjects with reported crime incidents and whether the subject was at or near the reported crime incidents. These alerts will enable authorities to include or exclude monitored subjects from an ongoing investigation.

(2) Prior to June 30, 2005, the board of probation and parole shall contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents using a system meeting the requirements described in subdivision (b)(1)(C).

(3) The board's contract with this vendor may provide for services necessary to implement or facilitate any of the provisions of this part including the collection and disposition of the charges and fees provided for in this part and § 40-28-201(a)(2) and to allow for the reasonable cost of collection of the proceeds.

(4) On or before April 1, 2006, the board shall make a report to a joint meeting of the judiciary committee of the senate and the house of representatives and the joint oversight committee on correction regarding the implementation of this part, and the results of the programs created by this part. [Acts 2004, ch. 899,§ 5; 2005, ch. 179,§§ 1,2.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Cross-References. Probation, paroles and pardons, title 40, ch. 28.

Section to Section References. This section is referred to in §§ 40-39-303, 40-39-304, 40-39, 305, 40-39-306.

40-39-303. Enrollment in satellite-based monitoring programs as mandatory condition of release. — (a) Notwithstanding any other provision of law, the board of probation and parole may require, as a mandatory condition of release for any person convicted of a sexual offense as defined in § 40-39-301(2), that any person so released under its supervision be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation or parole, consistent with the requirements of § 40-39-302.

(b) The board of probation and parole may require, as a mandatory condition of release for any person convicted of a serious offense as defined in this chapter or for other offenders as the board deems appropriate, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation or parole, consistent with the requirements of § 40-39-302.

(c) Offender participation in a location tracking and crime correlation based monitoring and supervision program under this section shall be at the sole discretion of the board and shall conform to the participant payment requirements stated in § 40-39-305, and be based upon the person's ability to pay. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Cross-References. Probation, paroles and pardons, title 40, ch. 28.

Section to Section References. This section is referred to in § 40-39-304.

40-39-304. Offense of intentional tampering with, removal of, or vandalism to device — Aiding, abetting or assisting. — (a) Intentional tampering with, removal of, or vandalism to a device issued pursuant to a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 by a person duly enrolled in the program is a Class A misdemeanor for the first offense, punishable by confinement in the county jail for not less than one hundred eighty (180) days. The minimum one hundred eighty-day sentence provided for this Class A misdemeanor offense is mandatory, and no person committing the offense shall be eligible for suspension of sentence, diversion, or probation until the minimum sentence is served in its entirety. A second or subsequent violation under this section is a Class E felony. Additionally, if the person violating this section is on probation, parole, or any other alternative to incarceration, then the violation shall also constitute sufficient grounds for immediate revocation of probation, parole, or other alternative to incarceration. Any violation of this section shall result in the imposition of the mandatory release condition specified in § 40-39-303(a) and (b).

(b) Any person who knowingly aids, abets, or assists a person duly enrolled in a location tracking and crime correlation based monitoring and supervision program described in § 40-39-302 in tampering with, removing, or vandalizing a device issued pursuant to the program commits a Class A misdemeanor. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Penalty for Class E felony, § 40-35-111.

Probation, paroles and pardons, title 40, ch. 28.

Revocation of probation, §§ 40-35-310, 40-35-311.

Section to Section References. This section is referred to in § 40-39-303.

40-39-305. Fees — Waiver of fees. — (a) The board of probation and parole is authorized to assess a daily or monthly fee, as the board deems reasonable and necessary to effectuate the purposes of this program, from serious offenders and violent sexual offenders who are required by the board to participate in the sexual offender monitoring program described in § 40-39-302. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system. Fees assessed by the board pursuant to this program may be collected in accordance with § 40-39-302(b)(3).

(b) The board may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of the fee. The board shall waive only that portion of the surcharge which the offender is financially unable to pay. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

40-39-306. Sharing of criminal incident information across state agencies and with vendor — Correlation reports. — Notwithstanding any other provision of law, the department of correction, the board of probation and parole, the Tennessee bureau of investigation, and all local law enforcement agencies are specifically authorized to share criminal incident information, limited to the time, place, and nature of the crime, with each other and the vendor selected by the department to carry out the purposes of this part, and the department is authorized to direct the vendor so chosen to use data collected pursuant to § 40-39-302(b) in preparing correlation reports as described in that subsection for distribution to and use by state and local law enforcement agencies. [Acts 2004, ch. 899, § 5.]

Compiler's Notes. See the Compiler's Notes under § 40-39-301.

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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Ellen C. Tewes, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 2005, 2006 and 2007 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994, Chapter 1 of the Public Acts of 1995, Chapter 554 of the Public Acts of 1996, Chapter 1 of the Public Acts of 1997, Chapter 574 of the Public Acts of 1998, Chapter 1 of the Public Acts of 1999, Chapter 574 of the Public Acts of 2000, Chapter 52 of the Public Acts of 2001, Chapter 491 of the Public Acts of 2002, Chapter 1 of the Public Acts of 2003, Chapter 437 of the Public Acts of 2004, Chapter 1 of the Public Acts of 2005, Chapter 507 of the Public Acts of 2006, and Chapter 1 of the Public Acts of 2007 and that the Code sections codifying other Public Acts of 2007 are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 6th day of September, 2007.

Ellen C. Tewes

Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; that Chapters 1 and 543 of the 98th General Assembly; that Chapters 1 and 554 of the 99th General Assembly; that Chapters 1 and 574 of the 100th General Assembly; that Chapters 1 and 574 of the 101st General Assembly; that Chapters 52 and 491 of the 102nd General Assembly; that Chapters 1 and 437 of the 103rd General Assembly; Chapters 1 and 507 of the 104th General Assembly; and that Chapter 1 of the 105th General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 6th day of September, 2007.

Riley C Darnell
Secretary of State

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.
PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-202. Part definitions.
40-39-203. Offender registration — Registration forms — Contents.
40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders.
40-39-212. Registration requirement.

PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-201. Short title — Legislative findings.

Section to Section References. This section is referred to in § 40-28-201.

40-39-202. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. A "conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including courts-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, for an offense committed in another jurisdiction that would be classified as a sexual offense under subdivision (17) or a violent sexual offense under subdivision (25), if committed in this state, shall be considered a conviction for the purposes of this part. Conviction does not include a disposition of pretrial diversion under § 40-15-105, a disposition of judicial diversion under § 40-35-313, or the equivalent dispositions from other jurisdictions;

(3) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of employment, school, or institution of higher education where the student is enrolled, or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;
(B) College;
(C) University; or
(D) Independent postsecondary institution;

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Offender" means both "sexual offender" and "violent sexual offender", unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender;

(10) "Parent" means any biological parent, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian; provided, however, that "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(11) "Primary residence" means a place where the person abides, lodges, resides, or establishes any other living accommodations in this state for five (5) consecutive days;

(12) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the TDOC, a private contractor with the TDOC, or the board;

(13) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(10);

(14) "Resident" means any person who abides, lodges, resides, or establishes any other living accommodations in this state;

(15) "Secondary residence" means a place where the person abides, lodges, or resides, or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year, and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(16) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense as defined in subdivision (17); or has another qualifying conviction as defined in subdivision (2);

(17) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant was an authority figure, as defined in § 39-13-527 (a)(3)(A) and (B), to the victim, or if the defendant has at least one (1) prior conviction for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c);

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) [Deleted by 2007 amendment.]

(vi) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507;

(ix) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (17)(A);

(x) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (17)(A);

(xi) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (17)(A);

(xii) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (17)(A);

(xiii) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (17)(A);

(xiv) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (17)(A);

(xv) Aggravated statutory rape, under § 39-13-506(c); or

(xvi) Exploitation of a minor by electronic means, under § 39-13-529; provided, that the victim of the offense is less than thirteen (13) years of age;

(B) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed];

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to

commit any of the offenses enumerated in this subdivision (17)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (17)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (17)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (17)(B);

(18) "SOR" means the TBI's centralized record system of offender registration, verification, and tracking information;

(19) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(20) "TBI" means the Tennessee bureau of investigation;

(21) "TBI registration form" means the Tennessee sexual offender/violent sexual offender registration, verification, and tracking form;

(22) "TDOC" means the Tennessee department of correction;

(23) "TIES" means the Tennessee information enforcement system;

(24) "Violent sexual offender" means a person who has been convicted in this state of committing a "violent sexual offense", as defined in subdivision (25), or has another qualifying conviction, as defined in subdivision (2);

(25) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor, under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];

(N) Criminal exposure to HIV, under 39-13-109(a)(1);

(O) Statutory rape by an authority figure, under § 39-13-532;

(P) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (25);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (25);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (25);

(S) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (25);

(T) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (25); or

(U) Incest, under § 39-15-302; and

(26) "Within forty-eight (48) hours" means a continuous forty-eight-hour period, not including Saturdays, Sundays, or federal or state holidays. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 6-9; 2007, ch. 262, §§ 1, 2; 2007, ch. 465, § 4; 2007, ch. 594, § 6.]

Compiler's Notes. Acts 2007, ch. 262, § 3 provided that the act shall apply to all offenders committing the offense of incest on or after May 30, 2007.

For the Preamble to the act regarding criminal penalties, procedure and sentencing, please refer to Acts 2007, ch. 594.

Amendments. The 2007 amendment by ch. 262 added (25)(U).

The 2007 amendment by ch. 465 added "whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court" in the second and third sentences in (2); in (16), deleted "provided, that:" at the end and deleted former (16)(A) and (16)(B) which read:

"(A) The conviction occurs on or after January 1, 1995; or

"(B) If the conviction occurred prior to January 1, 1995, the person:

"(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

"(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

"(iii) Is discharged from incarceration without supervision on or after January 1, 1995;" and in (24), substituted "has been convicted in this state of committing" for "has a conviction, as defined in subdivision (2), for", substituted ", or has another qualifying conviction, as defined in subdivision (2);" for "; provided, that:" at the end, and deleted former (24)(A) and (24)(B) which read:

"(A) The conviction occurs on or after January 1, 1995; or

"(B) If the conviction occurred prior to January 1, 1995, the person:

"(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

"(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

"(iii) Is discharged from incarceration without supervision on or after January 1, 1995;".

The 2007 amendment by ch. 594 added (25)(O), and redesignated former (25)(O) through 25(S) as present (25)(P) through (25)(T), respectively.

Effective Dates. Acts 2007, ch. 262, § 3. May 30, 2007.

Acts 2007, ch. 465, § 5. June 21, 2007; provided, that for all other purposes other than implementing the provisions of the act, the act shall take effect August 1, 2007.

Acts 2007, ch. 594, § 8. June 28, 2007.

Section to Section References. This section is referred to in §§ 37-1-153, 38-3-123, 40-29-204, 40-32-101, 40-39-203, 40-39-207, 40-39-211, 40-39-212, 40-39-301, 49-5-413.

NOTES TO DECISIONS

1. Sexual Offender.

Where defendant was charged with violating T.C.A. § 40-39-211, a court erred by requiring the state to accept defendant's stipulation that he was a sex offender because his status as a convicted sex offender was an element of the offense, and the court's action barred the state from carrying its burden of proving every element of the charged offense. State v. Wrigglesworth, — S.W.3d —, 2006 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. July 26, 2006).

40-39-203. Offender registration — Registration forms — Contents. — (a)(1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, or becoming employed or practicing a vocation or becoming a student in this state, the offender shall register in person, as required by the provisions of this part. Likewise, within forty-eight (48) hours of release on probation or any other alternative to incarceration, excluding parole, the offender shall register

in person, as required by the provisions of this part.

(2) Regardless of an offender's date of conviction or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) and who was an adult when the offense occurred is required to register in person as required by this part, if the person was required to register as any form of sexual offender in another jurisdiction prior to the offender's presence in this state.

(3) An offender who resides and is registered in this state who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of the intention to move to another state, report to the offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

(4) Within forty-eight (48) hours of a material change in employment or vocational status, the offender shall report the change to the person's registering agency. For purposes of this subdivision (a)(4), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment, or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for seven (7) consecutive days or more.

(b)(1) An offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours prior to the offender's release, register in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal, or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(2) After registering with the incarcerating facility as provided in subdivision (b)(1), an offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours after the offender's release from the incarcerating institution, report in person to the offender's registering agency, unless the place of incarceration is also the person's registering agency.

(c) An offender from another state, jurisdiction, or country who has established a primary or secondary residence within this state, or has established a physical presence at a particular location, shall, within forty-eight (48) hours of establishing residency or a physical presence, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3).

(d)(1) An offender from another state, jurisdiction, or country, who is not a resident of this state, shall, within forty-eight (48) hours of employment,

commencing practice of a vocation or becoming a student in this state, register in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), with:

(A) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(B) The law enforcement agency of any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(2) Within forty-eight (48) hours of an offender from another state, jurisdiction, or country, who is not a resident of this state, making a material change in the offender's vocational or employment or vocational status within this state, the offender shall report the change to the person's registering agency. For purposes of this subdivision (d)(2), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment, or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for seven (7) consecutive days or more.

(e) An offender from another state, jurisdiction, or country, who becomes a resident of this state, pursuant to the interstate compact provisions of title 40, chapter 28, part 4, shall, within forty-eight (48) hours of entering the state, register in person with the board, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), in addition to the requirements of title 40, chapter 28, part 4, and the sex offender directives from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the registration requirements of this part.

(g) Offenders who were previously required to register under title 40, chapter 39, part 1 [repealed], shall register in person with the designated law enforcement agency by August 31, 2005. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form the offender's intent to reside in another state, jurisdiction, or country, and who then decides to remain in this state, shall, within forty-eight (48) hours of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (i).

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under the penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases;

(2) Date and place of birth;

(3) Social security number;

(4) State of issuance and identification number of any valid driver license or licenses, or if no valid driver license card is held, any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer, or manufactured home, used or owned by an offender, including descriptions, vehicle identification numbers, and license tag numbers;

(11) Any vessel, live-aboard vessel, or houseboat used by an offender, including the name of the vessel, description, and all identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed or practices a vocation, or is a student;

(13) Race and gender;

(14) Name, address, and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults, and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known;

(16) Whether any minors reside in the primary or secondary residence; and

(17)(A) Any other registration, verification, and tracking information, including fingerprints and a current photograph of the offender, vehicles and vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(B) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by this subdivision (i)(17)(A). The rules shall specify that the photograph or digital image submitted for each offender must conform to the following compositional specifications or the entry will not be accepted for use on the registry and the agency will be required to resubmit the photograph:

(i) Head Position:

(a) The person being photographed must directly face the camera;

(b) The head of the person should not be tilted up, down, or to the side; and

(c) The head of the person should cover about 50% of the area of the photo;

(ii) Background:

(a) The person being photographed should be in front of a neutral, light-colored background; and

(b) Dark or patterned backgrounds are not acceptable;

(iii) The photograph must be in focus;

(iv) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted;

(v) Head Coverings and Hats:

(a) Photographs of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; and

(b) Photos of applicants with tribal or other headgear not specifically religious in nature are not permitted.

(j)(1) Notwithstanding the registration deadlines otherwise established by this section, any person convicted of a sexual offense or violent sexual offense in this state or who has another qualifying conviction as defined in § 40-39-202(2), but who is not required to register for the reasons set out in subdivision (j)(2), shall have until August 1, 2007, to register as a sexual offender or violent sexual offender in this state.

(2) Subdivision (j)(1) shall apply to offenders:

(A) Whose conviction for a sexual offense or violent sexual offense occurred prior to January 1, 1995;

(B) Who were not on probation, parole, or any other alternative to incarceration for a sexual offense or prior sexual offense on or after January 1, 1995;

(C) Who were discharged from probation, parole, or any other alternative to incarceration for a sexual offense or violent sexual offense prior to January 1, 1995; or

(D) Who were discharged from incarceration without supervision for a sexual offense or violent sexual offense prior to January 1, 1995.

(k) No later than the third day after an offender's initial registration, the registration agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (i) to TBI headquarters in Nashville.

(*l*) The offender's signature on the TBI registration form creates the presumption that the offender has knowledge of the registration, verification, and tracking requirements of this part. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 10-14; 2007, ch. 126, § 1; 2007, ch. 465, §§ 2, 3.]

Amendments. The 2007 amendment by ch. 126 added (a)(4); and added (d)(2) and redesignated former (d)(1) and (d)(2) as present (d)(1)(A) and (d)(1)(B).

The 2007 amendment by ch. 465 added (a)(2) and redesignated former (a)(2) as present (a)(3); and added (j) and redesignated former (j) and (k) as present (k) and (*l*).

Effective Dates. Acts 2007, ch. 126, § 2. July 1, 2007.

Acts 2007, ch. 465, § 5. June 21, 2007; provided, that for all other purposes other than implementing the provisions of the act, the act shall take effect August 1, 2007.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-205, 40-39-206.

40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions.

NOTES TO DECISIONS

1. In General.

Defendant's conviction for failing to report as a sexual offender was reversed as a constructive amendment of the indictment occurred when the jury was permitted to convict defendant for a crime different from that which was charged or included within the indictment; the indicted offense of failing to register impermissibly varied from the proof at trial, which established the separate offense of failing to report, while the proof at trial established that defendant complied with the initial registration requirement, but failed to annually report in person. State v. Roskom, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 123 (Tenn. Crim. App. Feb. 9, 2007).

40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders. — (a) Using information received or collected pursuant to this part, the TBI shall establish, maintain, and update a centralized record system of offender registration, verification, and tracking information. The TBI may receive information from any credible source and may forward the information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification, and tracking information to the identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with the provisions of this part, pursuant to the powers enumerated in subsection (f), the TBI shall make the information available through the SOR to the district attorney general, designated law enforcement agencies, and the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release.

(c) [Deleted by 2007 amendment.]

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of institutions of higher education, courts, probation and parole, the district attorneys general and their employees, and other public officers and employees assigned responsibility for offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this part.

(e) For any offender convicted in this state of a sexual offense or violent sexual offense, as defined by this part, that requires the offender to register pursuant to this part, the information concerning the registered offender set out in subdivisions (e)(1)-(10) shall be considered public information. If an offender from another state establishes a residence in this state and is required to register in this state pursuant to § 40-39-203, the information concerning the registered offender set out in subdivisions (e)(1)-(10) shall be considered public information regardless of the date of conviction of the offender in the other state. In addition to making the information available in the same manner as public records, the TBI shall prepare and place the information on

the state's Internet homepage. This information shall become a part of the Tennessee internet criminal information center when that center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

(1) The offender's complete name, as well as any aliases;

(2) The offender's date of birth;

(3) The sexual offense or offenses, or violent sexual offense or offenses of which the offender has been convicted;

(4) The primary and secondary addresses, including the house number, county, city, and ZIP code in which the offender resides;

(5) The offender's race and gender;

(6) The date of last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number and issuing state, or any state or federal issued identification number;

(9) The offender's parole or probation officer; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. These rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2007, ch. 531, §§ 1, 2.]

Amendments. The 2007 amendment deleted former (c) which read: "For all sexual offenses, and offenses now defined as violent sexual offenses, committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on the TBI registration form shall be confidential; provided, that the TBI, a local law enforcement agency, or a law enforcement agency of any institution of higher education may release relevant information deemed necessary to protect the public concerning a specific offender who is required to register pursuant to this part."; and, in the introductory paragraph of (e), substituted "For any offender convicted in this state of a sexual offense or violent sexual offense, as defined by this part, that requires the offender to register pursuant to this part" for "For all sexual offenses, and offenses now defined as violent sexual offenses, committed on or after July 1, 1997" in the first sentence, made a minor stylistic change in the first sentence, and added the second sentence.

Effective Dates. Acts 2007, ch. 531, § 3. June 27, 2007.

Cross-References. Confidentiality of public records, § 10-7-504.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-209.

40-39-208. Violations — Penalty — Venue — Providing records for prosecution.

NOTES TO DECISIONS

1. Failure To Report as Sexual Offender.
Defendant's conviction for failing to report as a sexual offender was reversed as a constructive amendment of the indictment occurred when the jury was permitted to convict defendant for a crime different from that which was charged or included within the indictment; the indicted offense of failing to register impermissibly varied from the proof at trial, which established the separate offense of failing to report, while the proof at trial established that defendant complied with the initial registration requirement, but failed to annually report in person. State v. Roskom, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 123 (Tenn. Crim. App. Feb. 9, 2007).

40-39-211. Residential and work restrictions.

Section to Section References. This section is referred to in § 40-35-302.

40-39-212. Registration requirement. — (a) Upon the court's acceptance of a defendant's entry of a plea of guilty, and, notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence, or becomes a student in this state, and who enters a plea of guilty to a qualifying offense in § 40-39-202(17) or § 40-39-202(25), shall be required to register with a registering agency.

(b) Notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence, or becomes a student in this state, and who enters a plea of guilty to an offense in another state, county, or jurisdiction that may result in a conviction of a qualifying offense in § 40-39-202(17) or § 40-39-202(25), shall be required to register with a registering agency.

(c) Upon the court's acceptance of a defendant's entry of a plea of guilty, and notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant from another state who enters a plea of guilty to an offense in this state that may result in a conviction of a qualifying offense in § 40-39-202(17) or § 40-39-202(25), shall be required to register with a registering agency. [Acts 2007, ch. 451, § 1.]

Effective Dates. Acts 2007, ch. 451, § 3. July 1, 2007.

PART 3—TENNESSEE SERIOUS AND VIOLENT SEX OFFENDER MONITORING PILOT PROJECT ACT

40-39-301. Part definitions.

Cited: State v. Matlock, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 382 (Tenn. Crim. App. May 9, 2007).

40-39-302. Establishment of program — Promulgation of guidelines — Duties.

Section to Section References. This section is referred to in §§ 39-13-522, 40-39-303, 40-39-304, 40-39-305, 40-39-306.

40-39-305. Fees — Waiver of fees.

Section to Section References. This section is referred to in § 40-39-303.

2008 supplement to the 2006 Tennessee Code, reflecting changes to Tenn. Code Ann. § 40-39-101 *et seq*.

Tennessee Code Annotated

2008 Supplement

Updated through the 2008 Regular Session
of the General Assembly

Volume 7B

2006 Replacement
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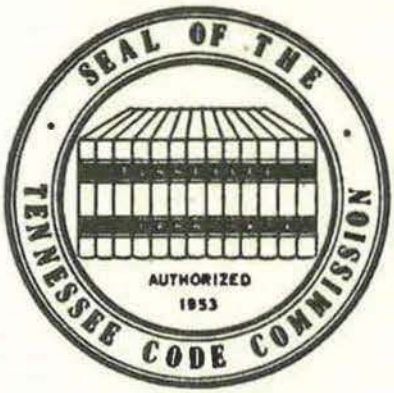
Tennessee Code Commission



CHIEF JUSTICE WILLIAM M. BARKER, Chair
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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Ellen C. Tewes, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 2005, 2006, 2007 and 2008 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994, Chapter 1 of the Public Acts of 1995, Chapter 554 of the Public Acts of 1996, Chapter 1 of the Public Acts of 1997, Chapter 574 of the Public Acts of 1998, Chapter 1 of the Public Acts of 1999, Chapter 574 of the Public Acts of 2000, Chapter 52 of the Public Acts of 2001, Chapter 491 of the Public Acts of 2002, Chapter 1 of the Public Acts of 2003, Chapter 437 of the Public Acts of 2004, Chapter 1 of the Public Acts of 2005, Chapter 507 of the Public Acts of 2006, Chapter 1 of the Public Acts of 2007,and Chapter 605 of the Public Acts of 2008 and that the Code sections codifying other Public Acts of 2008 are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Tennessee Code Commission, this 14th day of August, 2008.

Ellen C. Tewes
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Riley C. Darnell, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; that Chapters 1 and 543 of the 98th General Assembly; that Chapters 1 and 554 of the 99th General Assembly; that Chapters 1 and 574 of the 100th General Assembly; that Chapters 1 and 574 of the 101st General Assembly; that Chapters 52 and 491 of the 102nd General Assembly; that Chapters 1 and 437 of the 103rd General Assembly; Chapters 1 and 507 of the 104th General Assembly; and that Chapters 1 and 605 of the 105th General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 14th day of August, 2008.

Riley C. Darnell
Secretary of State

CHAPTER 39

SEXUAL OFFENDER REGISTRATION AND MONITORING

SECTION.

PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-201. Short title — Legislative findings.
40-39-202. Part definitions.
40-39-203. Offender registration — Registration forms — Contents.
40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions.
40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders. [Amended effective January 1, 2009. See the Compiler's Notes.]
40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.
40-39-208. Violations — Penalty — Venue — Providing records for prosecution.
40-39-209. Removing records from SOR.
40-39-210. Death of offender.
40-39-211. Residential and work restrictions.
40-39-212. Registration requirement.
40-39-213. Possession of offender identification required.
40-39-214. Providing information in registry. [Effective January 1, 2009.]
40-39-215. Offenses — Sexual offenders or violent sexual offenders — Defense. [Effective January 1, 2009.]

PART 2—TENNESSEE SEXUAL OFFENDER AND VIOLENT SEXUAL OFFENDER REGISTRATION, VERIFICATION, AND TRACKING ACT OF 2004

40-39-201. Short title — Legislative findings. — (a) This part shall be known as and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004."

(b) The general assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part, to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions that are implemented at sentencing, or, at the time of release from incarceration, that require that those who are financially able must pay specified administrative costs to the appropriate registering agency, which shall retain one hundred dollars ($100) of these costs for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year, with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry; and

(8) The general assembly also declares, however, that in making information about certain offenders available to the public, the general assembly does not intend that the information be used to inflict retribution or additional punishment on those offenders. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2008, ch. 1164, § 1.]

Amendments. The 2008 amendment, in (b)(7), substituted "shall retain one hundred dollars ($100) of these costs" for "shall retain these costs", and added "with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry" to the end.

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in § 40-28-201.

NOTES TO DECISIONS

1. Constitutionality.

Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, T.C.A. § 40-39-201 et seq., and the Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act, T.C.A. § 40-39-301 et seq., do not violate the ex post facto clause of the U.S. Constitution. Doe v. Bredesen, — F.3d —, 2007 FED App. 456P, 2007 U.S. App. LEXIS 26630 (6th Cir. Nov. 16, 2007).

40-39-202. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Board" means the board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction or other country. A

conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court, for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense, if committed in this state, shall be considered a conviction for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction;

(3) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Month" means a calendar month;

(10) "Offender" means both sexual offender and violent sexual offender, unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender;

(11) "Parent" means any biological parent, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(12) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;

(13) "Register" means the initial registration of a sexual or violent sexual offender, or the re-registration of a sexual offender or violent sexual offender after deletion or termination from the SOR;

(14) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the

Tennessee department of correction, a private contractor with the Tennessee department of correction or the board;

(15) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(13);

(16) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) "Resident" means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) "Secondary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b) or aggravated statutory rape under § 39-13-506(c);

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vi) Kidnapping, under § 39-13-303, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class D felony, Class E felony, or a misdemeanor;

(ix) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507 [repealed];

(x) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (20)(A);

(xi) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (20)(A);

(xii) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiii) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (20)(A);

(xiv) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (20)(A);

(xv) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvi) Aggravated statutory rape, under § 39-13-506(c); or

(xvii) Exploitation of a minor by electronic means, under § 39-13-529; or

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);

(21) "SOR" means the TBI's centralized record system of offender registration, verification and tracking information;

(22) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(23) "TBI" means the Tennessee bureau of investigation;

(24) "TBI registration form" means the Tennessee sexual offender registration, verification and tracking form;

(25) "TDOC" means the Tennessee department of correction;

(26) "TIES" means the Tennessee information enforcement system;

(27) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions that are implemented at sentencing, or, at the time of release from incarceration, that require that those who are financially able must pay specified administrative costs to the appropriate registering agency, which shall retain one hundred dollars ($100) of these costs for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year, with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry; and

(8) The general assembly also declares, however, that in making information about certain offenders available to the public, the general assembly does not intend that the information be used to inflict retribution or additional punishment on those offenders. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2008, ch. 1164, § 1.]

Amendments. The 2008 amendment, in (b)(7), substituted "shall retain one hundred dollars ($100) of these costs" for "shall retain these costs", and added "with the remaining fifty dollars ($50.00) of fees to be remitted to the Tennessee bureau of investigation's sex offender registry" to the end.

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in § 40-28-201.

NOTES TO DECISIONS

1. Constitutionality.

Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, T.C.A. § 40-39-201 et seq., and the Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act, T.C.A. § 40-39-301 et seq., do not violate the ex post facto clause of the U.S. Constitution. Doe v. Bredesen, — F.3d —, 2007 FED App. 456P, 2007 U.S. App. LEXIS 26630 (6th Cir. Nov. 16, 2007).

40-39-202. Part definitions. — As used in this part, unless the context otherwise requires:

(1) "Board" means the board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. "Conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction or other country. A

conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the court, for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense, if committed in this state, shall be considered a conviction for the purposes of this part. "Convictions," for the purposes of this part, also include a plea taken in conjunction with § 40-35-313 or its equivalent in any other jurisdiction;

(3) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school or institution of higher education where the student is enrolled or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment that involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way, regardless of the period of employment, whether the employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

(6) "Law enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office;

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Month" means a calendar month;

(10) "Offender" means both sexual offender and violent sexual offender, unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender;

(11) "Parent" means any biological parent, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(12) "Primary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for five (5) consecutive days;

(13) "Register" means the initial registration of a sexual or violent sexual offender, or the re-registration of a sexual offender or violent sexual offender after deletion or termination from the SOR;

(14) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the

Tennessee department of correction, a private contractor with the Tennessee department of correction or the board;

(15) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(13);

(16) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) "Resident" means any person who abides, lodges, resides or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) "Secondary residence" means a place where the person abides, lodges, resides or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and that is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and that is not the person's primary residence, including any out-of-state address;

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b) or aggravated statutory rape under § 39-13-506(c);

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vi) Kidnapping, under § 39-13-303, except when committed by a parent of the minor;

(vii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(viii) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class D felony, Class E felony, or a misdemeanor;

(ix) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507 [repealed];

(x) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (20)(A);

(xi) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (20)(A);

(xii) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiii) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (20)(A);

(xiv) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (20)(A);

(xv) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvi) Aggravated statutory rape, under § 39-13-506(c); or

(xvii) Exploitation of a minor by electronic means, under § 39-13-529; or

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401 [repealed] or § 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B); or

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);

(21) "SOR" means the TBI's centralized record system of offender registration, verification and tracking information;

(22) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(23) "TBI" means the Tennessee bureau of investigation;

(24) "TBI registration form" means the Tennessee sexual offender registration, verification and tracking form;

(25) "TDOC" means the Tennessee department of correction;

(26) "TIES" means the Tennessee information enforcement system;

(27) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(28) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604 [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606 [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608 [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507(c)(1) [repealed];

(N) Criminal exposure to HIV, under § 39-13-109(a)(1);

(O) Statutory rape by an authority figure, under § 39-13-532;

(P) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (28);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (28);

(S) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (28);

(T) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (28);

(U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (28);

(V) Incest, under § 39-15-302; or

(W) Aggravated rape of a child under § 39-13-531; and

(29) "Within forty-eight (48) hours" means a continuous forty-eight hour period, not including Saturdays, Sundays, or federal or state holidays. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 6-9; 2007, ch. 262, §§ 1, 2; 2007, ch. 465, §§ 1, 4; 2007, ch. 594, § 6; 2008, ch. 714, § 1; 2008, ch. 1164, § 2.]

Compiler's Notes. Acts 2007, ch. 262, § 3 provided that the act shall apply to all offenders committing the offense of incest on or after May 30, 2007.

For the Preamble to the act regarding criminal penalties, procedure and sentencing, please refer to Acts 2007, ch. 594.

Acts 2008, ch. 714, § 1 purported to amend this section by adding subdivision (25)(V), effective July 1, 2008. Acts 2008, ch. 1164, § 2 amended this section by adding the same provisions as subdivision (28)(W), effective July 1, 2008; therefore, the amendment by ch. 714 was not given effect.

Amendments. The 2007 amendment by ch. 262 deleted (17)(A)(v) which read: "Incest, under § 39-15-302;"; and added (25)(U).

The 2007 amendment by ch. 465 added "whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court" in the second and third sentences in (2); in (16), deleted "provided, that:" at the end and deleted former (16)(A) and (16)(B) which read:

"(A) The conviction occurs on or after January 1, 1995; or

"(B) If the conviction occurred prior to January 1, 1995, the person:

"(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

"(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

"(iii) Is discharged from incarceration without supervision on or after January 1, 1995;" and in (24), substituted "has been convicted in this state of committing" for "has a conviction, as defined in subdivision (2), for", substituted ", or has another qualifying conviction, as defined in subdivision (2);" for "; provided, that:" at the end, and deleted former (24)(A) and (24)(B) which read:

"(A) The conviction occurs on or after January 1, 1995; or

"(B) If the conviction occurred prior to January 1, 1995, the person:

"(i) Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;

"(ii) Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995; or

"(iii) Is discharged from incarceration without supervision on or after January 1, 1995;".

The 2007 amendment by ch. 594 added (25)(O), and redesignated former (25)(O) through 25(S) as present (25)(P) through (25)(T), respectively.

The 2008 amendment by ch. 1164 added the definitions of "month", "register" and "report"; in the definition of "conviction", substituted "a court-martial" for "courts-martial: and rewrote the last sentence which read: "Conviction does not include a disposition of pretrial diversion under § 40-15-105, a disposition of judicial diversion under § 40-35-313, or the equivalent dispositions from other jurisdictions"; in the definition of "designated law enforcement agency", inserted "physical presence, place of"; in the definition of "employed or practices a vocation", inserted "volunteering"; added ", including establishing a physical presence in this state" to the end of the definition of "resident"; in the definition of "sexual offense", in (A), rewrote (ii) which read: "Statutory rape, under § 39-13-506, if the defendant was an authority figure, as defined in § 39-13-527 (a)(3)(A) and (B), to the victim, or if the defendant has at least one (1) prior conviction for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c);", deleted former (v), which had been repealed in 2007, added present (vi) and (viii), redesignated the subdivisions of (A) accordingly, in present (ix), added "[repealed]", in present (xiii) and (xiv), substituted "to commit" for "for", in present (xv) inserted "commit", in present (xvii) deleted "provided, that the victim of the offense is less than thirteen (13) years of age;", and in (B), added ", only if the facts of the conviction satisfy the definition of aggravated statutory rape" to the end of (ii); in the definition of "TBI registration form", substituted "sexual offender registration" for "sexual offender/violent sexual offender registration"; in the definition of "violent sexual offender", added "when the offense is classified as a Class B or Class C felony" to the end of (K), added (S), and redesignated former (S)-(U) as present (T)-(V), respectively, and added (W); and amended the internal references to this section throughout.

Effective Dates. Acts 2007, ch. 262, § 3. May 30, 2007.

Acts 2007, ch. 465, § 5. June 21, 2007; provided, that for all other purposes other than implementing the provisions of the act, the act shall take effect August 1, 2007.

Acts 2007, ch. 594, § 8. June 28, 2007.

Acts 2008, ch. 714, § 2. July 1, 2008.

Acts 2008, ch. 1164, § 17. July 1, 2008.

Cross-References. Penalties for Class B, C, D and E felonies, § 40-35-111.

Section to Section References. This section is referred to in §§ 37-1-153, 38-3-123, 40-29-204, 40-32-101, 40-35-213, 40-35-315, 40-39-203, 40-39-207, 40-39-211, 40-39-212, 40-39-215, 40-39-301, 49-5-413.

Cited: State v. Whitecotton, — S.W.3d —, 2008 Tenn. Crim. App. LEXIS 303 (Tenn. Crim. App. Apr. 23, 2008).

NOTES TO DECISIONS

1. Sexual Offender.

Where defendant was charged with violating T.C.A. § 40-39-211, a court erred by requiring the state to accept defendant's stipulation that he was a sex offender because his status as a convicted sex offender was an element of the offense, and the court's action barred the state from carrying its burden of proving every element of the charged offense. State v. Wrigglesworth, — S.W.3d —, 2006 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. July 26, 2006).

40-39-203. Offender registration — Registration forms — Contents. — (a)(1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, becoming employed or practicing a vocation or becoming a student in this state, the offender shall register or report in person, as required by this part. Likewise, within forty-eight (48) hours of release on probation or any alternative to incarceration, excluding parole, the offender shall register or report in person, as required by this part.

(2) Regardless of an offender's date of conviction or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) and who was an adult when the offense occurred is required to register or report in person as required by this part, if the person was required to register as any form of sexual offender in another jurisdiction prior to the offender's presence in this state.

(3) An offender who resides and is registered in this state and who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of the intention to move to another state, register or report to the offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

(4) Within forty-eight (48) hours of a change in any other information given to the registering agency by the offender that is contained on the registration form, the offender must report the change to the registering agency.

(5) Within forty-eight (48) hours of being released from probation or parole, an offender must report to the proper law enforcement agency, which shall then become the registering agency and take over registry duties from the board.

(6) Within forty-eight (48) hours of a material change in employment or vocation status, the offender shall report the change to the person's registering agency. For purposes of this subdivision (a)(6), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(7) Within three (3) days, excluding holidays, of an offender changing the offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without this state, the offender shall report the change to the offender's designated law enforcement agency.

(b)(1) An offender who is incarcerated in this state in a local, state or federal jail or a private penal institution shall, within forty-eight (48) hours prior to the offender's release, register or report in person, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(2) After registering or reporting with the incarcerating facility as provided in subdivision (b)(1), an offender who is incarcerated in this state in a local, state or federal jail or a private penal institution shall, within forty-eight (48) hours after the offender's release from the incarcerating institution, report in person to the offender's registering agency, unless the place of incarceration is also the person's registering agency.

(c) An offender from another state, jurisdiction or country who has established a primary or secondary residence within this state or has established a physical presence at a particular location shall, within forty-eight (48) hours of establishing residency or a physical presence, register or report in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3).

(d)(1) An offender from another state, jurisdiction or country who is not a resident of this state shall, within forty-eight (48) hours of employment, commencing practice of a vocation or becoming a student in this state, register or report in person, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), with:

(A) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(B) The law enforcement agency or any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(2) Within forty-eight (48) hours of an offender from another state, jurisdiction or country who is not a resident of this state making a material change in the offender's vocational or employment or vocational status within this state, the offender shall report the change to the person's registering agency. For purposes of this subdivision (d)(2), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(e) An offender from another state, jurisdiction or country who becomes a resident of this state, pursuant to the interstate compact provisions of title 40, chapter 28, part 4, shall, within forty-eight (48) hours of entering the state, register or report in person with the board, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3), in addition to the requirements of title 40, chapter 28, part 4 and the specialized conditions for sex offenders from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the registration requirements of this part. Offenders who do not maintain either a primary or secondary residence shall be required to report to their registering agency monthly for so long as they do not maintain either a primary or secondary residence.

(g) Offenders who were previously required to register or report under former title 40, chapter 39, part 1 [repealed], shall register or report in person with the designated law enforcement agency by August 31, 2005. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form the offender's intent to reside in another state, jurisdiction or country and who then decides to remain in this state shall, within forty-eight (48) hours of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (i).

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases, including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise;

(2) Date and place of birth;

(3) Social security number;

(4) A photocopy of a valid driver's license, or if no valid driver license has been issued to the offender, a photocopy of any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted, the date of the offenses and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer or manufactured home used or owned by an offender, including descriptions, vehicle information numbers and license tag numbers;

(11) Any vessel, live-aboard vessel or houseboat used by an offender, including the name of the vessel, description, and all identifying numbers;

(12) Name and address of each institution of higher education in this state

where the offender is employed or practices a vocation or is a student;

(13) Race and gender;

(14) Name, address and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults, the number of victims and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known;

(16) Verification by the TBI or the offender that the TBI has received the offender's DNA sample;

(17) A complete listing of the offender's electronic mail address information or any instant message, chat or other Internet communication name or identity that the person uses or intends to use;

(18) Whether any minors reside in the primary or secondary residence; and

(19)(A) Any other registration, verification and tracking information, including fingerprints and a current photograph of the offender, vehicles and vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(B) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by subdivision (i)(19)(A). The rules shall specify that the photograph or digital image submitted for each offender must conform to the following compositional specifications or the entry will not be accepted for use on the registry and the agency will be required to resubmit the photograph:

(i) Head Position:

(a) The person being photographed must directly face the camera;

(b) The head of the person should not be tilted up, down or to the side; and

(c) The head of the person should cover about fifty percent (50%) of the area of the photo;

(ii) Background:

(a) The person being photographed should be in front of a neutral, light-colored background; and

(b) Dark or patterned backgrounds are not acceptable;

(iii) The photograph must be in focus;

(iv) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted; and

(v) Head Coverings and Hats:

(a) Photographs of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; and

(b) Photos of applicants with tribal or other headgear not specifically religious in nature are not permitted.

(j)(1) Notwithstanding the registration deadlines otherwise established by this section, any person convicted of a sexual offense or violent sexual offense in this state or who has another qualifying conviction as defined in § 40-39-202, but who is not required to register for the reasons set out in subdivision (j)(2), shall have until August 1, 2007, to register as a sexual offender or violent sexual offender in this state.

(2) Subdivision (j)(1) shall apply to offenders:

(A) Whose convictions for a sexual offense or violent sexual offense occurred prior to January 1, 1995;

(B) Who were not on probation, parole or any other alternative to incarceration for a sexual offense or prior sexual offense on or after January 1, 1995;

(C) Who were discharged from probation, parole or any other alternative to incarceration for a sexual offense or violent sexual offense prior to January 1, 1995; or

(D) Who were discharged from incarceration without supervision for a sexual offense or violent sexual offense prior to January 1, 1995.

(k) No later than the third day after an offender's initial registration, the registration agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (i) to TBI headquarters in Nashville.

(l) The offender's signature on the TBI registration form creates the presumption that the offender has knowledge of the registration, verification and tracking requirements of this part.

(m) Registry information regarding all registered offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information may be electronically transmitted by the TBI to a business or organization that offers electronic communication or remote computing services for the purpose of prescreening users or for comparison with information held by the requesting business or organization. In order to obtain the information from the TBI, the requesting business or organization that offers electronic communication or remote computing services shall agree to notify the TBI forthwith when a comparison indicates that any such registered sex offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information is being used on their system. The requesting business or organization shall also agree that the information will not be further disseminated.

(n) If the offender's DNA sample has not already been collected pursuant to § 40-35-321 or any other law and received by TBI, the offender's DNA sample shall be taken by the registering agency at the time the offender registers or at the offender's next scheduled registration or reporting and sent to TBI.

(o) An offender who registers or reports as required by this section prior to July 1, 2008, shall provide the additional information on the registration form required by this section at the offender's next scheduled registration or reporting date. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 10-14; 2007, ch. 126, § 1; 2007, ch. 465, §§ 2, 3; 2008, ch. 979, §§ 1-3; 2008, ch. 1164, § 3.]

Compiler's Notes. Acts 2008, ch. 979, §§ 1-3 purported to amend this section by adding subdivisions (a)(5) and (i)(18) and subsection (m), effective July 1, 2008. Acts 2008, ch. 1164, § 3 amended this section by adding the same provisions as subdivisions (a)(7) and (i)(17) and subsection (m), effective July 1, 2008; therefore, the amendments by ch. 979 were not given effect.

Amendments. The 2007 amendment by ch. 126 added (a)(4); and added (d)(2) and redesignated former (d)(1) and (d)(2) as present (d)(1)(A) and (d)(1)(B).

The 2007 amendment by ch. 465 added (a)(2)

and redesignated former (a)(2) as present (a)(3); and added (j) and redesignated former (j) and (k) as present (k) and (l).

The 2008 amendment by ch. 1164 substituted "register or report" for "register" in (a)(1) and (2), (b)(1), (c), (d)(1), (e) and (g); substituted "registering or reporting" for "registering" in (b)(2); in (a), added (4) and (5), redesignated former (4) as present (6), added (7), and substituted "in effect for five (5) consecutive days" for "in effect for seven (7) consecutive days" in (6); in (d), substituted "law enforcement agency or any institution" for "law enforcement agency of any institution" in (1)(B), and substituted "in effect for five (5) consecutive days" for "in effect for seven (7) consecutive days" at the end of (2); substituted "the specialized conditions for sex offenders from the board" for "the sex offender directives from the board" at the end of (e); added the second sentence of (f); in (i), added ", including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise" to the end of (1), rewrote (4) which read: "State of issuance and identification number of any valid driver license or licenses, or if no valid driver license card is held, any state or federal government issued identification card;", inserted ", the date of the offenses" in (6), substituted "vehicle information numbers" for "vehicle identification numbers" in (10), inserted "the number of victims" in (15),, and added (16) and (17) and redesignated former (16) and (17) as present (18) and (19), respectively; added (m)-(o); and made minor stylistic changes throughout.

Effective Dates. Acts 2007, ch. 126, § 2. July 1, 2007.

Acts 2007, ch. 465, § 5. June 21, 2007; provided, that for all other purposes other than implementing the provisions of the act, the act shall take effect August 1, 2007.

Acts 2008, ch. 979, § 4. July 1, 2008.

Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-205, 40-39-206.

NOTES TO DECISIONS

1. Failure to Register.

Trial court did not err by denying defendant alternative sentencing under T.C.A. § 40-35-303(a) following his conviction of failing to timely register as a violent sexual offender in violation of T.C.A. § 40-39-203(a)(1) because: (1) Defendant was sentenced as a Range II multiple offender and was therefore ineligible for the statutory presumption of T.C.A. § 40-35-102(6)(A) favoring alternative sentencing; (2) Defendant was ineligible for alternative sentencing until he served 90 days in confinement, the minimum sentence under T.C.A. § 40-39-208(b), (c); (3) Trial court considered defendant's potential for rehabilitation and treatment; (4) Incidents leading to two of defendant's prior sexual offense convictions took place near educational institutions and his current conviction was failing to timely report that he had begun attending an educational institution; and (5) Defendant's prior criminal record included convictions for sodomy, rape, use of a firearm in the commission of a rape, first-degree criminal sexual conduct, abduction, and assault and battery. State v. Whitecotton, — S.W.3d —, 2008 Tenn. Crim. App. LEXIS 303 (Tenn. Crim. App. Apr. 23, 2008).

40-39-204. Entering required data on SOR for verification, identification, and enforcement — Reporting to update information or registration form — Administrative costs — TBI as central repository — Tolling of registration requirements — Exemptions. — (a) The TBI shall maintain and make available a connection to the SOR, for all criminal justice agencies with TIES internet capabilities, by which registering agencies shall enter original, current and accurate data required by this part. The TBI shall provide viewing and limited write access directly to the SOR through the TIES internet to registering agencies for the entry of record verification data, changes of residence, employment, or other pertinent data required by this part, and to assist in offender identification. Registering agencies should immediately, but in no case to exceed twelve (12) hours from registration, enter all data received from the offender as required by the TBI and § 40-39-203(i), into the TIES internet for the enforcement of this part by TBI, designated law enforcement agencies, TDOC, private contractors with TDOC, and the board.

(b) At least once during the months of March, June, September, and December of each calendar year, all violent sexual offenders shall report in

person to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information in the TBI registration form. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from the in-person reporting and fingerprinting, as otherwise provided by this part. Once a year, the violent sexual offender shall pay the specified administrative costs, not to exceed one hundred fifty dollars ($150), one hundred dollars ($100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars ($50.00) shall be submitted by the registering agency to the TBI for maintenance, upkeep and employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from paying the administrative cost as otherwise provided by this part.

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form and to pay the specified administrative costs, not to exceed one hundred fifty dollars ($150), one hundred dollars ($100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars ($50.00) shall be submitted by the registering agency to the TBI for maintenance, upkeep and employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities are exempt from the in-person reporting and fingerprinting and administrative cost as otherwise provided by this part. However, if an offender is released or discharged from a nursing home, assisted living facility or mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to the release or discharge, the offender shall, within forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

(d) Within three (3) days after the offender's verification, the designated law enforcement agency with whom the offender verified shall send by United

States postal service the original signed TBI registration form containing information required by § 40-39-203(i) to TBI headquarters in Nashville. The TBI shall be the state central repository for all original TBI registration forms and any other forms required by § 40-39-207 that are deemed necessary for the enforcement of this part. The designated law enforcement agency shall retain a duplicate copy of the TBI registration form as a part of the business records for that agency.

(e) If a person required to register under this part is reincarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge, or any other form of alternative sentencing, the offender shall immediately report the offender's status as a sexual offender or violent sexual offender to the facility where the offender is incarcerated or detained, and notify the offender's appropriate registering agency, if different, that the offender is currently being detained or incarcerated. Registration, verification and tracking requirements for such persons are tolled during the subsequent incarceration. Within forty-eight (48) hours of the release from any subsequent reincarcerations, the offender shall register with the appropriate designated law enforcement agency. Likewise, if a person who is required to register under this part is deported from this country, the registration, verification and tracking requirements for such persons are tolled during the period of deportation. Within forty-eight (48) hours of the return to this state after deportation, the offender shall register with the appropriate designated law enforcement agency.

(f) Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, shall be exempted from the in-person reporting, fingerprinting, and administrative cost requirements. However, it shall be the responsibility of the offender, the offender's guardian, the person holding the offender's power of attorney, or in the absence thereof, the administrator of the facility, to report any changes in the residential status to TBI headquarters in Nashville by United States postal service. Further, if an offender is released or discharged from a nursing home, assisted living facility, mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to the release or discharge, the offender shall, within forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. The offenders who are considered homeless shall be required to report to their registering agency monthly. By the authority established in § 40-39-206(f), the TBI shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, §§ 15, 16; 2008, ch. 1164, §§ 4, 16.]

Amendments. The 2008 amendment substituted "not to exceed one hundred fifty dollars ($150), one hundred dollars ($100) of which" for "not to exceed one hundred dollars ($100), which" in the third sentence of (b) and in the first sentence of (c); added the fourth sentence of (b); added the second and last two sentences of (c); added the last two sentences of (f); and added the second sentence of (g).

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

NOTES TO DECISIONS

1. In General.

Defendant's conviction for failing to report as a sexual offender was reversed as a constructive amendment of the indictment occurred when the jury was permitted to convict defendant for a crime different from that which was charged or included within the indictment; the indicted offense of failing to register impermissibly varied from the proof at trial, which established the separate offense of failing to report, while the proof at trial established that defendant complied with the initial registration requirement, but failed to annually report in person. State v. Roskom, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 123 (Tenn. Crim. App. Feb. 9, 2007).

Six-year sentence for failing to register as a sex offender under T.C.A. § 40-39-204 was proper, because defendant was unsuitable for alternative sentencing due to his lengthy history of criminal behavior and his conviction for violent offenses; also, he did not show that his alcohol and drug abuses were treatable best in the community. State v. Franklin, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 818 (Tenn. Crim. App. Sept. 4, 2007).

40-39-206. Centralized record system — Reporting — Violations — Confidentiality of certain registration information — Immunity from liability — Public information regarding offenders. [Amended effective January 1, 2009. See the Compiler's Notes.] — (a) Using information received or collected pursuant to this part, the TBI shall establish, maintain, and update a centralized record system of offender registration, verification, and tracking information. The TBI may receive information from any credible source and may forward the information to the appropriate law enforcement agency for investigation and verification. The TBI shall promptly report current sexual offender registration, verification, and tracking information to the identification division of the federal bureau of investigation.

(b) Whenever there is a factual basis to believe that an offender has not complied with the provisions of this part, pursuant to the powers enumerated in subsection (f), the TBI shall make the information available through the SOR to the district attorney general, designated law enforcement agencies, and the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release.

(c) [Deleted by 2007 amendment.]

(d) Notwithstanding the provisions of any law to the contrary, officers and employees of the TBI, local law enforcement, law enforcement agencies of institutions of higher education, courts, probation and parole, the district attorneys general and their employees, and other public officers and employees assigned responsibility for offenders' supervised release into the community shall be immune from liability relative to their good faith actions, omissions, and conduct pursuant to this part.

(e) For any offender convicted in this state of a sexual offense or violent sexual offense, as defined by this part, that requires the offender to register pursuant to this part, the information concerning the registered offender set out in subdivisions (e)(1)-(13) shall be considered public information. If an offender from another state establishes a residence in this state and is required

to register in this state pursuant to § 40-39-203, the information concerning the registered offender set out in subdivisions (e)(1)-(13) shall be considered public information regardless of the date of conviction of the offender in the other state. In addition to making the information available in the same manner as public records, the TBI shall prepare and place the information on the state's Internet homepage. This information shall become a part of the Tennessee internet criminal information center when that center is created within the TBI. The TBI shall also establish and operate a toll-free telephone number, to be known as the "Tennessee Internet Criminal Information Center Hotline," to permit members of the public to call and inquire as to whether a named individual is listed among those who have registered as offenders as required by this part. The following information concerning a registered offender is public:

(1) The offender's complete name, as well as any aliases, including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise;

(2) The offender's date of birth;

(3) The sexual offense or offenses, or violent sexual offense or offenses of which the offender has been convicted;

(4) The primary and secondary addresses, including the house number, county, city, and ZIP code in which the offender resides;

(5) The offender's race and gender;

(6) The date of last verification of information by the offender;

(7) The most recent photograph of the offender that has been submitted to the TBI SOR;

(8) The offender's driver license number and issuing state, or any state or federal issued identification number;

(9) The offender's parole or probation officer; and

(10) The name and address of any institution of higher education in the state at which the offender is employed, carries on a vocation or is a student.

(11) **[Effective January 1, 2009. See the Compiler's Notes.]** The text of the provision of law or laws defining the criminal offense or offenses for which the offender is registered;

(12) **[Effective January 1, 2009. See the Compiler's Notes.]** A physical description of the offender, including height, weight, color of eyes and hair, tattoos, scars and marks; and

(13) **[Effective January 1, 2009. See the Compiler's Notes.]** The criminal history of the offender, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status and the existence of any outstanding arrest warrants for the sex offender.

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. These rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2007, ch. 531, §§ 1, 2; 2008, ch. 1164, §§ 5, 6, 15.]

Compiler's Notes. Acts 2008, ch. 1164, § 6 amended this section effective January 1, 2009, by adding subdivisions (e)(11)-(13). Prior to January 1, 2009, subdivisions (e)(11)-(13) are not in effect. On and after January 1, 2009, subdivisions (e)(11)-(13) are in effect.

Amendments. The 2007 amendment deleted former (c) which read: "For all sexual offenses, and offenses now defined as violent sexual offenses, committed prior to July 1, 1997, except as otherwise provided in subsections (a) and (b), information reported on the TBI registration form shall be confidential; provided, that the TBI, a local law enforcement agency, or a law enforcement agency of any institution of higher education may release relevant information deemed necessary to protect the public concerning a specific offender who is required to register pursuant to this part."; and, in the introductory paragraph of (e), substituted "For any offender convicted in this state of a sexual offense or violent sexual offense, as defined by this part, that requires the offender to register pursuant to this part" for "For all sexual offenses, and offenses now defined as violent sexual offenses, committed on or after July 1, 1997" in the first sentence, made a minor stylistic change in the first sentence, and added the second sentence.

The 2008 amendment, effective July 1, 2008, substituted "subdivisions (e)(1)-(13)" for "subdivisions (e)(1)-(10)" in two places in the introductory paragraph of (e); added ", including, but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise" to the end of (e)(1); and, effective January 1, 2009, added (e)(11)-(13). See the Compiler's Notes.

Effective Dates. Acts 2007, ch. 531, § 3. June 27, 2007.

Acts 2008, ch. 1164, § 17. July 1, 2008, January 1, 2009.

Cross-References. Confidentiality of public records, § 10-7-504.

Section to Section References. This section is referred to in §§ 40-39-202, 40-39-204, 40-39-214.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration. — (a)(1) No sooner than ten (10) years after termination of active supervision on probation, parole or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville.

(2) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-101, and the offense being expunged is an offense eligible for expunction under § 40-32-101, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(c) If it is determined that the offender has not been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period and that the offender has substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part.

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(1) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(A) Has one (1) or more prior convictions for a sexual offense, as defined in § 40-39-202, regardless of when the conviction or convictions occurred; or

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202.

(2) For purposes of subdivision (g)(1)(A):

(A) "Prior conviction" means that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a sexual offense prior to or at the time of committing another sexual offense;

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a sexual offense. If an offense in a jurisdiction other than this state is not identified as a sexual offense in this state, it shall be considered a prior conviction if the elements of the offense are the same as the elements for a sexual offense; and

(C) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). A sexual offense shall be considered as having been committed after a separate period of incarceration or supervision if the sexual offense is committed while the person was:

(i) On probation, parole or community correction supervision for a sexual offense;

(ii) Incarcerated for a sexual offense;

(iii) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a sexual offense; or

(iv) On escape status from any correctional institution when incarcerated for a sexual offense.

(h)(1) Any offender required to register pursuant to this chapter because the offender was convicted of the offense of statutory rape under § 39-13-506 and

the offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville, if the offender would not be required to register if the offense was committed on or after July 1, 2006.

(2) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender would not be required to register if the offender committed the same offense on or after July 1, 2006. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(3) If it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses, and that the offender has substantially complied with this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the period of registration or has not substantially complied with this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in this state, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(i)(1)(A) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a sexual offense, the person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from August 1, 2007, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(1)(A).

(2) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because the person was convicted, discharged from parole or probation supervision or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a violent

sexual offense, the person shall continue to comply with the registration, verification and tracking requirements for the life of that offender. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 18; 2008, ch. 1164, § 7.]

Amendments. The 2008 amendment added (a)(2); added (e) and (i) and redesignated former (e)-(g) as (f)-(h); in present (g), added ", regardless of when the conviction or convictions occurred" to the end of (1)(A), and rewrote (2) which read: "(2) As used in subdivision (f)(1), "prior conviction" means any conviction for a sexual offense or violent sexual offense, as defined in § 40-39-202(17) and (25), respectively, that occurred prior to the date of the offense for which the offender is currently required to register.".

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in §§ 40-39-204, 40-39-209.

40-39-208. Violations — Penalty — Venue — Providing records for prosecution. — (a) It is an offense for an offender to knowingly violate any provision of this part. Violations shall include, but not be limited to, the following:

(1) Failure of an offender to timely register or report;

(2) Falsification of a TBI registration form;

(3) Failure to timely disclose required information to the designated law enforcement agency;

(4) Failure to sign a TBI registration form;

(5) Failure to pay the annual administrative costs, if financially able;

(6) Failure to timely disclose status as a sexual offender or violent sexual offender to the designated law enforcement agency upon reincarceration;

(7) Failure to timely report to the designated law enforcement agency upon release after reincarceration;

(8) Failure to timely report to the designated law enforcement agency following re-entry in this state after deportation; and

(9) Failure to timely report to the offender's designated law enforcement agency when the offender moves to another state.

(b) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(c) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350), and imprisonment for not less than ninety (90) days.

(d) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600), and imprisonment for not less than one hundred eighty (180) days.

(e) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100), and imprisonment for not less than one (1) year.

(f) A violation of this part is a continuing offense. If an offender is required to register pursuant to this part, venue lies in any county in which the offender may be found or in any county where the violation occurred.

(g) In a prosecution for a violation of this section, upon the request of a district attorney general, law enforcement agency, the board of probation and parole, or its officers, or a court of competent jurisdiction, and for any lawful purpose permitted by this part, the records custodian of SOR shall provide the

requesting agency with certified copies of specified records being maintained in the registry.

(h) The records custodian providing copies of records to a requesting agency, pursuant to subsection (g), shall attach the following certification:

I, _____, HAVING BEEN APPOINTED BY THE DIRECTOR OF THE TENNESSEE BUREAU OF INVESTIGATION AS CUSTODIAN OF THE BUREAU'S CENTRALIZED RECORDS SYSTEM OF SEXUAL AND VIOLENT SEXUAL OFFENDERS, REGISTRATION, VERIFICATION AND TRACKING INFORMATION (SOR), HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE RECORDS MAINTAINED WITHIN SAID REGISTRY.

SIGNATURE _____ TITLE _____ DATE _____

AFFIX THE BUREAU SEAL HERE

[Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 19; 2008, ch. 1164, § 8.]

Amendments. The 2008 amendment added "or report" to the end of (a)(1).

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Cited: State v. Franklin, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 818 (Tenn. Crim. App. Sept. 4, 2007).

NOTES TO DECISIONS

1. Failure To Report as Sexual Offender.

Defendant's conviction for failing to report as a sexual offender was reversed as a constructive amendment of the indictment occurred when the jury was permitted to convict defendant for a crime different from that which was charged or included within the indictment; the indicted offense of failing to register impermissibly varied from the proof at trial, which established the separate offense of failing to report, while the proof at trial established that defendant complied with the initial registration requirement, but failed to annually report in person. State v. Roskom, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 123 (Tenn. Crim. App. Feb. 9, 2007).

Trial court did not err by denying defendant alternative sentencing under T.C.A. § 40-35-303(a) following his conviction of failing to timely register as a violent sexual offender in violation of T.C.A. § 40-39-203(a)(1) because: (1) Defendant was sentenced as a Range II multiple offender and was therefore ineligible for the statutory presumption of T.C.A. § 40-35-102(6)(A) favoring alternative sentencing; (2) Defendant was ineligible for alternative sentencing until he served 90 days in confinement, the minimum sentence under T.C.A. § 40-39-208(b), (c); (3) Trial court considered defendant's potential for rehabilitation and treatment; (4) Incidents leading to two of defendant's prior sexual offense convictions took place near educational institutions and his current conviction was failing to timely report that he had begun attending an educational institution; and (5) Defendant's prior criminal record included convictions for sodomy, rape, use of a firearm in the commission of a rape, first-degree criminal sexual conduct, abduction, and assault and battery. State v. Whitecotton, — S.W.3d —, 2008 Tenn. Crim. App. LEXIS 303 (Tenn. Crim. App. Apr. 23, 2008).

Collateral References. Admissibility of Actuarial Risk Assessment Testimony in Proceeding to Commit Sex Offender. 20 A.L.R.6th 607.

40-39-209. Removing records from SOR. — Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction as part of an expunction order pursuant to § 40-32-101, so long as the offense is eligible for expunction under § 40-32-101. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2008, ch. 1164, § 9.]

Amendments. The 2008 amendment added "as part of an expunction order pursuant to § 40-32-101, so long as the offense is eligible for expunction under § 40-32-101" to the end of the section.

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in § 40-39-207.

40-39-210. Death of offender. — Upon receipt of notice of the death of a registered offender, verified through the registering agency or TBI officials by obtaining a copy of the offender's certificate of death, by checking the social security death index or by obtaining a copy of an accident report, the TBI shall remove all data pertaining to the deceased offender from the SOR. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2008, ch. 1164, § 10.]

Amendments. The 2008 amendment inserted ", verified through the registering agency or TBI officials by obtaining a copy of the offender's certificate of death, by checking the social security death index or by obtaining a copy of an accident report".

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

40-39-211. Residential and work restrictions. — (a) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly establish a primary or secondary residence or any other living accommodation, knowingly obtain sexual offender treatment or attend a sexual offender treatment program or knowingly accept employment within one thousand feet (1,000′) of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.

(b) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(1) Reside within one thousand feet (1,000′) of the property line on which the offender's former victims or the victims' immediate family members reside;

(2) Come within one hundred feet (100′) of any of the offender's former victims, except as otherwise authorized by law; or

(3) Contact any of the offender's former victims or the victims' immediate family members without the consent of the victim or consent of the victim's parent or guardian if the victim is a minor being contacted by telephone, in writing, by electronic mail, Internet services or any other form of electronic communication, unless otherwise authorized by law.

(c) While mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly reside with a minor. Notwithstanding this subsection (c), the offender may reside with a minor, if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d)(1) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(A) Be upon or remain on the premises of any school building or school grounds in this state when the person has reason to believe children under eighteen (18) years of age are present;

(B) Stand, sit idly, whether or not the person is in a vehicle, or remain within five hundred feet (500′) of a school building or on school grounds in this state when children under eighteen (18) years of age are present, while not having a reason or relationship involving custody of or responsibility for a student or any other specific or legitimate reason for being there; or

(C) Be in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when children under eighteen (18) years of age are present in the conveyance.

(2) Subdivision (d)(1) shall not apply when the offender:

(A) Is a student in attendance at the school;

(B) Is attending an academic conference or other scheduled school event with school officials as a parent or legal guardian of a child who is enrolled in the school and is participating in the conference or event;

(C) Resides at a state licensed or certified facility for incarceration, health or convalescent care;

(D) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian; or

(E) Is temporarily on school grounds, during school hours, for the purpose of making a mail, food or other delivery.

(e) Changes in the ownership or use of property within one thousand feet (1,000′) of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(f) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(g)(1) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars ($350) and imprisonment for not less than ninety (90) days.

(2) A second violation of this part is punishable by a fine of not less than six hundred dollars ($600) and imprisonment for not less than one hundred eighty (180) days.

(3) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars ($1,100) and imprisonment for not less than one (1) year. [Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 20; 2008, ch. 1164, § 11.]

Amendments. The 2008 amendment divided former (b) into present (b)(1) and (b)(2) by

deleting "nor shall the offender knowingly" at the end of (b)(1); added (b)(3); substituted "shall knowingly reside with a minor" for "shall knowingly establish a primary or secondary residence or any other living accommodation where a minor resides" at the end of the first sentence in the introductory paragraph of (c); added (d) and (g) and redesignated former (d) and (e) as (e) and (f), respectively; and, in present (f), substituted "this part" for "this section", and added the last sentence.

Effective Dates. Acts 2008, ch. 1164, § 17. July 1, 2008.

Section to Section References. This section is referred to in § 40-35-302.

Cited: State v. Franks, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 627 (Tenn. Crim. App. Aug. 10, 2007).

Collateral References. Validity of Statutes Imposing Residency Restrictions on Registered Sex Offenders. 25 A.L.R.6th 227.

40-39-212. Registration requirement. — (a) Upon the court's acceptance of a defendant's entry of a plea of guilty or a finding of guilt by a jury or judge after trial, and, notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence, or becomes a student in this state, and who enters a plea of guilty to a qualifying offense in § 40-39-202(20) or § 40-39-202(28), shall be required to register with a registering agency.

(b) Notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence, or becomes a student in this state, and who enters a plea of guilty to an offense in another state, county, or jurisdiction that may result in a conviction of a qualifying offense in § 40-39-202(20) or § 40-39-202(28), shall be required to register with a registering agency.

(c) Upon the court's acceptance of a defendant's entry of a plea of guilty, and notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant from another state who enters a plea of guilty to an offense in this state that may result in a conviction of a qualifying offense in § 40-39-202(20) or § 40-39-202(28), shall be required to register with a registering agency.

(d) This part shall apply to offenders who received diversion under § 40-35-313 or its equivalent in any other jurisdiction. [Acts 2007, ch. 451, § 1; 2008, ch. 1164, § 12.]

Amendments. The 2008 amendment, in (a), inserted "or a finding of guilt by a jury or judge after trial"; and added (d).

Effective Dates. Acts 2007, ch. 451, § 3. July 1, 2007.

Acts 2008, ch. 1164, § 17. July 1, 2008.

40-39-213. Possession of offender identification required. — (a) Every sexual offender and violent sexual offender required to register pursuant to this part who is a resident of this state, upon obtaining a valid driver license or photo identification card issued and properly designated by the department of safety pursuant to § 55-50-353, shall always have the license or identification card in the offender's possession. If any offender is ineligible to be issued a driver license or photo identification card, the department shall provide the offender some other form of identification card or documentation that, if it is kept in the offender's possession, will satisfy the requirements of this section and § 55-50-353. If any sexual offender or violent sexual offender is determined to be indigent, an identification card or other

documentation in lieu of an identification card shall be issued to the offender at no cost.

(b) A violation of subsection (a) is a Class E felony punishable by a fine only of not less than two hundred fifty dollars ($250). [Acts 2008, ch. 1143, § 1.]

Effective Dates. Acts 2008, ch. 1143, § 3. July 1, 2008.

Cross-References. Penalty for Class E felony, § 40-35-111.

40-39-214. Providing information in registry. [Effective January 1, 2009.] — (a) Except as provided in subsection (c), immediately after a sex offender registers or updates a registration, TBI shall provide all information in the registry about the offender that is made public pursuant to § 40-39-206(e) to the following:

(1) The United States attorney general, who shall include that information in the national sex offender registry or other appropriate databases;

(2) Appropriate law enforcement agencies, including probation and parole offices, and each school and public housing agency, in each area in which the individual resides, is an employee, establishes a physical presence or is a student;

(3) Each jurisdiction where the sex offender resides, is an employee, establishes a physical presence or is a student, and each jurisdiction from or to which a change of residence, employment or student status occurs;

(4) Any agency responsible for conducting employment-related background checks;

(5) Social service entities responsible for protecting minors in the child welfare system;

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur; and

(7) Any organization, company or individual who requests such notifications pursuant to procedures established by TBI.

(b) In addition to the information provided pursuant to subsection (a), TBI shall provide all information in the registry about the offender, regardless of whether the information is made public pursuant to § 40-39-206(e), to the organization described in subdivision (a)(1) and appropriate law enforcement agencies.

(c) Notwithstanding subsection (a), TBI is not required to provide information to an organization or individual described in subdivision (a)(6) or (a)(7) more frequently than once every five (5) business days and an organization in (a)(6) or (a)(7) may elect to receive notification less frequently than five (5) business days. [Acts 2008, ch. 1164, § 13.]

Effective Dates. Acts 2008, ch. 1164, § 17. January 1, 2009.

40-39-215. Offenses — Sexual offenders or violent sexual offenders — Defense. [Effective January 1, 2009.] — (a) While mandated to comply with the requirements of this chapter, it is an offense for a sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, to knowingly:

(1) Pretend to be, dress as, impersonate or otherwise assume the identity of a real or fictional person or character or a member of a profession, vocation or occupation while in the presence of a minor, or with the intent to attract or entice a minor to be in the presence of the offender;

(2) Engage in employment, a profession, occupation or vocation, regardless of whether compensation is received, that the offender knows or should know will cause the offender to be in direct and unsupervised contact with a minor; or

(3) Operate, whether authorized to do so or not, any vehicle or specific type of vehicle, including, but not limited to, an ice cream truck or emergency vehicle, for the purpose of attracting or enticing a minor to be in the presence of the offender.

(b) It is a defense to a violation of this section that the offender was the parent of the minor in the offender's presence.

(c) A violation of this section is a Class A misdemeanor. [Acts 2008, ch. 1164, § 13.]

Effective Dates. Acts 2008, ch. 1164, § 17. January 1, 2009.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Part 3—Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act

40-39-301. Part definitions.

Cited: State v. Matlock, — S.W.3d —, 2007 Tenn. Crim. App. LEXIS 382 (Tenn. Crim. App. May 9, 2007).

NOTES TO DECISIONS

1. Constitutionality.

Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, T.C.A. § 40-39-201 et seq., and the Tennessee Serious and Violent Sex Offender Monitoring Pilot Project Act, T.C.A. § 40-39-301 et seq., do not violate the ex post facto clause of the U.S. Constitution. Doe v. Bredesen, — F.3d —, 2007 FED App. 456P, 2007 U.S. App. LEXIS 26630 (6th Cir. Nov. 16, 2007).

40-39-302. Establishment of program — Promulgation of guidelines — Duties.

Section to Section References. This section is referred to in §§ 39-13-522, 40-39-303, 40-39-304, 40-39-305, 40-39-306.

40-39-305. Fees — Waiver of fees.

Section to Section References. This section is referred to in §§ 40-28-205, 40-39-303.